

**New Jersey Department of Environmental Protection
Division of Water Quality
Bureau of Financing and Construction Permits**

RESPONSE TO COMMENTS

The New Jersey Department of Environmental Protection (Department) issued as a draft permit proposal to revoke and reissue the New Jersey Pollutant Discharge Elimination System (NJPDES) General Permit for Combined Sewer Systems (CSS), NJPDES No. NJ0105023, on August 27, 2003. This General Permit was last reissued on February 28, 2000 and was due to expire on February 28, 2005. The issuance of the draft permit and the scheduling of a public hearing regarding the draft permit were public noticed in the DEP Bulletin on August 27, 2003. The Public Notice for the issuance of the draft permit and the public hearing were published in The Record, The Star-Ledger, The Asbury Park Press, The Times, and the Courier-Post. The public comment period was, initially, scheduled to close on October 18, 2003.

The Public Notice, the draft permit and associated documents were mailed directly to permittees currently authorized under the General Permit, consultants who work with the permittees and other interested parties including municipal, State and Federal officials and were made available at the Division of Water Quality's website for permitting and technical information at <http://www.state.nj.us/dep/dwq/gps.htm>.

The Department held a Public Hearing on October 3, 2003 at the New Jersey Department of Environmental Protection Offices at 401 East State Street, Trenton, New Jersey, in the Public Hearing Room on the first floor. The public hearing commenced at approximately 10:20 A.M. and ended at 12:30 P.M.

Twenty-nine people attended the public hearing including an Executive Director and a Deputy Executive Director of utility authorities, eleven consultants, representatives from the United States Environmental Protection Agency Region II, and the Interstate Environmental Commission.

During the October 3, 2003 Public Hearing, one commenter requested an extension to the time allowed for the preparation and submission of comments. In response to the request the Department extended the close of the Public Comment Period from October 18, 2003 to November 1, 2003.

In a letter, dated October 14, 2003, the Mayors of five municipalities and the Executive Director of a Municipal Sewerage Authority served by combined sewer systems within the Passaic Valley Sewerage Commissioners (PVSC) service area and the Executive Director of the PVSC jointly requested an extension to the time allowed for the submission of comments to the draft permit. In their joint letter, these seven entities expressed a desire to develop a cohesive approach to the work required under the General Permit and requested a 120-day extension to the comment period to accommodate the development of the necessary agreements. In response to these comments, the Department reopened the public comment period. The reopened public comment period closed on January 11, 2004.

One person during the public hearing made oral presentation of comments. The Department received 15 letters containing written comments.

The following is a list of the persons, and their affiliations, which made either written or oral comments on the draft general, permit.

	<i>Name</i>	<i>Affiliation</i>
1	Clifford Gold	Clifford Gold Associates
2	Jose Torres, Mayor	City of Paterson
3	Sharpe James, Mayor	City of Newark
4	Glenn P. Cunningham, Mayor	Jersey City
5	Raymond J. McDonough, Mayor	Town of Harrison
6	Alberto Santos, Mayor	Town of Kearny
7	Stephen Gallo	Bayonne MUA
8	Robert Davenport	Passaic Valley Sewerage Commissioners
9	Frederick Margron	City of Paterson
10	John F. Zisa, Mayor	City of Hackensack
11	Andrew Kricun	Camden County MUA
12	George D. Fosdick, Mayor	Village of Ridgely Park
13	Eric Anderson	Bergen County UA
14	Gerald Calabrese, Mayor	Borough of Cliffside Park
15	Deborah Mans	NY/NJ Baykeeper
16	John Napolitano	Johnson & Conway, LLP on behalf of the North Bergen MUA
17	Paul J. Zarbetski, Mayor	Town of Harrison
18	Ryan J. Scerbo	DeCotiis, Fitzpatrick, Cole & Wisler L.L.P., on behalf of the Edgewater MUA
19	Vincent Rubino	CH2MHILL
20	B. Boris Rukovets	Interstate Environmental Commission
21	Patricia A. Kurkul	National Oceanic & Atmospheric Administration
22	Charles Dujardin	HydroQual, Inc.

SUMMARY OF CHANGES

The title of the general permit, “Combined Sewer Overflow (GP)” has been changed to “Combined Sewer Systems (GP)” to more accurately reflect the scope of the General Permit.

APPENDIX A, CONTENTS OF A PUBLIC PARTICIPATION WORK PLAN, has been modified in response to the comments received and the Department’s review. Under the section entitled “**Public Participation during the Development and Evaluation of Alternatives**”, the phrases “should be to involve” and “can be presented” in the first two sentences were replaced with the phrases “shall be to involve” and “shall be presented” to clarify the Department’s intent that these activities are mandatory, not discretionary.

Under the section entitled “**REQUIREMENTS**”, the phrase, “If only one public meeting is held,” in the second sentence of the second paragraph has been deleted to clarify that permittees are obligated to the same Public Participation Program requirements regardless of the number of public meetings that are held. Secondly, the phrase “in the Public Participation Report” was added to that sentence to confirm that the demonstration of compliance with the permit provisions shall be included in the submission of the Public Participation Report. The revised sentence now reads “The permittee must summarize in the Public Participation Report how the Permittee complied with provisions of the permit, including: . . .”

A summary of the comments received and the New Jersey Department of Environmental Protection’s (Department) responses to these comments have been included below:

1. COMMENT:

During the Public Hearing, on October 3, 2003, one commenter requested an extension to the time allowed for the preparation and submission of comments. The commenter stated that, as a consultant, he needed additional time to return and meet with his clients and their attorneys and to prepare more comprehensive and specific comments in addition to those presented that day. (1)

RESPONSE:

In response to the request made during the Public Hearing, the Department of Environmental Protection (Department) extended the close of the Public Comment Period from October 18, 2003 to November 1, 2003.

2. COMMENT:

In a letter, dated October 14, 2003, the Mayors and representatives of several communities served by combined sewer systems within the Passaic Valley Sewerage Commissioners (PVSC) service area, and the PVSC jointly requested an extension to the time allowed for the submission of comments to the draft permit. In the letter, they expressed the desire to develop a cohesive approach to the work required under the terms of the General Permit for Combined Sewer Systems. (2, 3, 4, 5, 6, 8, 9)

RESPONSE:

In response to these comments, the Department reopened the public comment period. The reopened public comment period closed on January 11, 2004. This provided a total of 137-days between the Public Notice of the Draft Permit and the close of the Public Comment Period.

3. COMMENT:

A group of municipalities served by the PVSC system is looking to work together to develop a comprehensive regional approach to addressing the issues in the revised permit. They asked the Department to keep an open mind and work with the group by perhaps revising the compliance dates in the permit or permitting certain activities to be performed at one representative community on behalf of the group, when the time comes. (9)

RESPONSE:

The National Combined Sewer Overflow (CSO) Control Policy (National Policy) requires each CSO permittee to develop Combined Sewer Overflow Long Term Control Plans (CSO LTCPs). If a number of permittees within a shared system would like to undertake a regional approach to perform the necessary studies and prepare the required reports, the Department would encourage and support such an effort as it may be more cost effective for the Permittees. However, each permittee has a regulatory obligation to satisfy the requirements of the provisions of the Federal Clean Water Act (CWA) for the facilities it owns and/or operates. The Department is prepared to work closely with the regulated communities to accommodate such cost-saving agreements as recommended by the group to the extent practicable.

It is important that the cost and performance analyses and feasibility studies required by this permit are completed on schedule to ensure the information is available for consideration in the TMDL/WLA/UAA Process (Including implementation.). Therefore, the Department does not intend to revise the compliance schedule contained in the draft permit.

4. COMMENT:

Since CSO's are generally located within older urban developed areas, the costs of these projects affect those communities that are least able to afford them. While the goal of the permit was recognized as laudable, the lack of funding places an unfair burden on urban communities. Municipalities with combined sewer systems have already expended significant sums of money to construct and implement CSO Solids/Floatables Controls Measures. These same municipalities are now expending, on an annual basis, additional monies for the operation and maintenance of these facilities. This is an extraordinarily expensive program for local communities to take and some suspect that it is even worse for large urban communities. Local funding of these projects will most likely require the elimination or reduction of other municipal services in an effort to minimize the financial impact upon the residents.

One commenter suggested that the Draft Permit creates an unfunded mandate that must be met by municipalities and other entities facing shrinking budgets and there is a need for the State to provide financial assistance for undertaking the new studies the proposed draft permit requires. Water quality improvements that are the goal for this program will benefit the entire population of New Jersey, and accordingly, funding for the program should be made available in the form of grants to offset the impact upon the current residents and ratepayers.

The Department has provided no mechanism for grants or grant type funding for these projects. The Department must consider the development of a grant or loan program for the development of the required studies, evaluation of the results and, where necessary, implementation of new technologies. The State should fund the monitoring and modeling of all pollutant loads into the State's receiving waters, including stormwater and benthic demands, to assess and demonstrate that the disinfection/reduction of CSO discharges is a necessary and vital step towards water quality improvements. Another commenter asserted that the magnitude of the costs involved warrant serious consideration of the need to provide State grant funding for the planning, design and construction phases. In one letter, a Board of Commissioners urged the Department to place these financial concerns before the Legislature with the request that grant funds be made available to underwrite the costs of implementing the requirements that will eventually be promulgated in the reissued permit. (1,10,12,13,16,18)

RESPONSE:

The New Jersey Constitution, Article VIII, Section II, paragraph 5, and N.J.S.A. 52:13H-1 et seq. prohibit certain new statutes and new rules and regulations from imposing "unfunded mandates" on counties, municipalities, or school districts. The General Permit for Combined Sewer Systems is not a new law, rule or regulation, and therefore, it is not subject to N.J.S.A. 52:13H-1 et seq. Moreover, even if the permit were considered to be a new law or regulation, it would not be considered an "unfunded mandate" because it is necessary to comply with Federal laws or rules or to meet eligibility standards for Federal entitlements, and it stems from the failure of the permittees to comply with previously enacted laws, rules and regulations. See, N.J.S.A. 52:13H-3. The General Permit implements the Federal mandates; it does not go beyond them.

The Department recognizes that the financial burden of addressing CSO needs in the State is of concern to many communities, and has taken steps at both the Federal and State level to provide financial assistance. The Sewage Infrastructure Improvement Act of 1988 authorized \$33.5 million for the award of 90% grants to eligible entities to address stormwater and CSO needs. In addition, the State Legislature as well as the general public supported various bond acts over the years to assist with infrastructure construction needs, particularly the Stormwater Management and CSO Abatement Bond Act of 1989, which authorized an additional \$50 million for these two infrastructure categories, as important sources of financing to advance planning, design and construction activities.

There have also been a number of Federal initiatives, including a number of proposals that involved a departure from traditional loan-only funding to authorization of grants, which was supported by the New Jersey. Unfortunately, these initiatives have not come to fruition. The DEP is exploring other State funding sources to provide for additional financial assistance to the CSO communities. In addition to these activities that are beyond the direct control of the Department, it should be noted that the Department and the New

Jersey Environmental Infrastructure Trust have implemented changes to the Environmental Infrastructure Financing Program (EIFP) to provide enhanced financing to CSO project sponsors.

The Department will continue its efforts to explore additional financial assistance for Combined Sewer System communities. The work required under this General Permit is required by the Federal Clean Water Act and is necessary to address CSO related impacts and, therefore, it is important that the studies required under the General Permit be conducted.

5. COMMENT:

The NJDEP appears to be leaning towards the presumptive approach for development and implementation of a Long-Term Control Plan as defined in the USEPA's National CSO Control Policy. Past receiving water monitoring and modeling studies conducted in the region and the nation have demonstrated that separate, storm sewer discharges are a major source of pollution within riverine and upper estuary watershed. Accordingly, vast monetary investments may be required of CSO municipalities for implementation of the Long-Term Control Plan without the realization of any significant improvement of water quality. The State of New Jersey and the Department should take the demonstrative approach to the development of the Long-Term Control Plan and should fund the monitoring and modeling of all pollutant loads into the State's receiving waters, including stormwater and benthic demands, to assess and demonstrate that the disinfection/reduction of CSO discharges is a necessary and vital step towards water quality improvements. (12)

RESPONSE:

The National Combined Sewer Overflow (CSO) Control Policy, which was incorporated at N.J.A.C. 14A-11, Appendix C, requires all CSO permittees to immediately undertake a process to develop CSO LTCPs which include the evaluation of alternatives for attaining compliance with the CWA, including compliance with water quality standards and protection of designated uses.

The National CSO Control Policy expects the CSO LTCPs to consider a reasonable range of alternatives. In the development of CSO LTCPs, the National CSO Control Policy requires permittees to adopt one of two approaches. These are:

- The "presumption approach," with performance criteria (i.e., 4-6 untreated overflow events or 85 percent by volume capture) used as an endpoint for LTCP development and implementation; and
- The "demonstration approach," which entails developing and implementing an LTCP that includes a suite of CSO controls sufficient to meet applicable water quality standards;

Under either approach, the Permittee will need to plan controls to allow cost-effective expansion or cost-effective retrofitting, if additional controls are subsequently determined to be necessary.

The presumption approach presumes the LTCP provides an adequate level of control to meet the water quality-based requirements of the CWA if the LTCP meets the performance criteria stipulated in the National CSO Control Policy. Under the presumption approach, controls adopted in the LTCP should be required to meet one of the following criteria:

- No more than an average of four overflow events per year, provided that the permitting authority may allow up to two additional overflow events per year;
- The elimination or the capture for treatment of no less than 85 percent by volume of the combined sewage collected in the CSS during precipitation events on a system-wide annual average basis; or
- The elimination or removal of no less than the mass of the pollutants identified as causing water quality impairment through the sewer system characterization, monitoring, and modeling effort for the volumes that would be captured for treatment above.

An LTCP that meets the criteria listed above can be presumed to provide an adequate level of control to meet the water quality-based requirements of the CWA, provided the permitting authority determines such a presumption is reasonable in light of the data and analysis conducted in the characterization, monitoring and modeling of the system and consideration of sensitive areas (II.C.4.a of the National CSO Control Policy).

The Policy also provides that a "...permittee may demonstrate that a selected control program, though not meeting the criteria of the "presumption approach," is adequate to meet the water quality-based requirement of the CWA..." This approach is referred to as the demonstration approach. The demonstration approach assumes that adequate data will be developed to reasonably demonstrate that implementation of the LTCP will provide for attainment of water quality standards.

In selecting the demonstration approach, the permittees would have several options for developing an LTCP that will be sufficient to meet applicable water quality standards. A permittee could, for example, develop an

LTCP that would provide for attainment of existing applicable water quality standards. Alternatively, the permittees could use a TMDL Process to demonstrate that water quality standards can be attained through a combination of CSO controls and other controls.

The National CSO Control Policy identifies four criteria for successful use of the demonstration approach. An LTCP based on the “demonstration approach” should show that:

- The CSO LTCP will protect water quality standards unless the standard cannot be met as a result of natural conditions or other pollution sources;
- The overflows remaining after implementation of the control program will not prevent the attainment of water quality standards;
- The planned control program will achieve the maximum pollution reduction benefits reasonably attainable; and
- The planned control program is designed to allow cost effective expansion or cost effective retrofitting if additional controls are subsequently determined to be necessary to meet water quality standards, including protection of designated uses.

Where water quality standards cannot be met because of other pollution sources, a TMDL or other watershed-based tool should be used to determine and apportion pollutant loads.

Regardless of whether the “Presumption” or “Demonstration” approach is used, the CSO LTCP ultimately selected must be sufficient to meet water quality standards and other Federal CWA requirements. The permittee is required to undertake a post-construction water quality assessment program of monitoring and collecting sufficient data to demonstrate compliance with water quality standards, including protection of designated uses.

In May 1999, the Department and USEPA Region 2 entered a Memorandum of Agreement including an 8-year schedule to produce TMDLs for all water quality limited segments remaining on the 1998 Section 303(d) List of Water Quality Limited Waterbodies in New Jersey or provide information necessary to remove waterbodies from the list. Each of the CSO impacted waterbodies has been scheduled for a TMDL development for fecal coliform in the USEPA/NJDEP Memorandum of Agreement, as amended. The TMDL process may result in the development of a waste load allocation (WLA) which may necessitate the designation of specific levels of pathogen controls on CSO discharges.

The demonstration approach encourages the development of total maximum daily loads (TMDLs) and/or the use of a watershed approach throughout the CSO LTCP process. In conducting the existing baseline water quality assessments as part of the system characterization, for example, the specific pollutants causing non-attainment of WQS, including existing or designated uses, would be identified, and then the sources of these pollutants can be identified and loads apportioned and quantified. Assessments would be made of the relative contribution of CSOs and other sources to the total pollutant loads to the receiving waters, and then a range of controls could be identified to target the CSO contribution. Controls for the non-CSO sources of pollutants could also be assessed at the same time.

The Department is pursuing a “Demonstration Approach” to CSO LTCP development and implementation and not the “Presumption Approach.” The results of the feasibility studies required under the General Permit may, also, be useful in a Use Attainability Analysis and possibly assist in the development of a basis for recommending a revision to the current Water Quality Standards. This approach accommodates the integration of water quality standards reviews and revisions, as appropriate, with the development of CSO LTCPs that supports the attainment of water quality standards without causing substantial and widespread economic and social impacts.

6. COMMENT:

The Town of Harrison is currently in the Distressed Cities Program. The New Jersey Department of Community Affairs is supervising the Town’s fiscal operations and providing necessary funding for our budget. The Town cannot afford a costly CSO project if no grant money is received from the State to pay for it. Over the last few years, the Town has spent well over 2 million dollars to evaluate, design, construct and maintain the current CSO solids/floatables control facilities in the Town. The Town is still paying off the loans that enabled it to construct that system. (17)

RESPONSE:

At the onset of the CSO Control Program, the Department recognized that remediation of the CSOs is expensive. The Department’s acknowledges the expense the City has incurred and recognizes that compliance

with CSO related requirements are a significant economic burden to the local government units. To ease the fiscal impact of such compliance on local government units, the Department is implementing a phased approach for CSO controls. It also has developed programs to provide financial assistance to local government units for the planning, design and construction of the needed Combined Sewer System infrastructure improvement projects.

Moreover, as stated earlier, the Department is not in the position to waive the requirement of compliance with the provisions of the General Permit. As part of the Consolidated Appropriations Act for Fiscal Year 2001 (P.L. No. 106-554), Congress amended Section 402 of the Clean Water Act (CWA) to make it a Federal requirement that National Pollutant Discharge Elimination System (NPDES/NJPDES) permits, administrative orders, or consent decrees for the control of CSOs “shall conform” to the 1994 Combined Sewer Overflow (CSO) Control Policy. The National Combined Sewer Overflow Control Policy requires all CSO permittees to immediately undertake a process to develop CSO LTCPs which include the evaluation of alternatives for attaining compliance with the CWA, including compliance with water quality standards and the protection of designated uses.

Please refer to the Response to Comment No. 4 for additional relevant information.

7. COMMENT:

Although the Borough of Cliffside Park does not own a combined sewer overflow point, it does have a sanitary sewer with Infiltration and/or Infiltration (I/I) concentration that contributes flow to the Borough of Edgewater and the combined sewer systems that flow to the Borough of Fort Lee.

Due to the design, age, local geology, and nature of the system, it has been determined that complete separation of the collection system is neither practical nor economically feasible. Nonetheless, the Borough has undertaken extensive efforts with regard to reducing infiltration and inflow to its collection system.

The Borough’s Infiltration and Inflow (I/I) reduction plan has included the systematic investigation and direction requiring residents to remove roof leaders, catch basins, illicit connections; the Borough, also, installed limited separate storm sewers where it was able to. To date, the Borough has expended funds in excess of \$2,500,000 for engineering, legal, administrative and construction costs in this regard. This sum does not include the indirect cost of redirecting Borough personnel to assist in these efforts.

The Borough of Cliffside Park supports the goals and objectives of the Department in protecting our environment and understands your charge to implement Federal mandates. Please recognize, however, that implementation of these regulations, as drafted, would bankrupt our community. The expenditure of significant public funds, to conduct additional study work in an area that has already been extensively evaluated, is redundant and will not yield appreciable results. (14)

RESPONSE:

The Department acknowledges the fiscal concerns expressed by the Borough of Cliffside Park, however, it is not in a position to relieve the Borough of its obligations to comply with the requirements of the Federal Clean Water Act (CWA) as defined by the National CSO Control Policy. The Department does not believe that compliance with the requirements of the General Permit would bankrupt the Borough of Cliffside Park.

First, in accordance with the Department’s records, the Borough of Cliffside Park has two small sections of combined sewers in its sewer system. The Borough does not own or operate a CSO Point or CSO Control Facility. Therefore, the Borough would not need to evaluate the feasibility or cost to provide disinfection to discharges from CSO Points or how to increase the conveyance of wastewater from CSO Control Facilities to the DTW for treatment. This should substantially reduce the engineering studies required of the Borough based on the permit.

Second, the Borough of Cliffside Park, in an Administrative Consent Order dated June 21, 2001 it entered into with the Department, agreed to permanently close the overflow release point identified as Regulator 10 on or before July 1, 2003. Completion of this action would eliminate one of the small combined sewer sections. The other section, which consists of 41 acres, conveys sewage to the Bergen County UA through the Borough of Fort Lee. Therefore, the Borough of Cliffside Park’s obligations under the General Permit would be limited to those requirements applicable to the 41 acres of combined sewer system tributary to the Borough of Fort Lee sewer system.

The above referenced findings are based upon the information available in the Department’s files. The findings may change depending upon the results of additional information that demonstrate that the Borough owns and/or operates additional portions of a combined sewer system. The Department encourages the

Borough of Cliffside Park, or any other entity, to contact the Department to clarify the applicability of the General Permit provisions to the types of facilities they own and/or operate.

The Department recognizes the efforts the Borough has made in improving its sewerage infrastructure. The Department, on numerous occasions, met and advised the Borough's representatives of the availability of \$101,762 Sewerage Infrastructure Improvement Act 90% Design Grant money to the Borough. Unfortunately, the Borough has not pursued the award of the grant funds.

The Department has assisted the Borough in effecting the referenced sewer separation work by providing the community with \$1,130,000 in low interest loans and is prepared to provide additional financial assistance in the form of low interest loans through the New Jersey Environmental Infrastructure Financing Program. Please refer to the response to Comment No. 4 for additional discussion on the availability of financial assistance from the Department.

8. COMMENT:

Some commenters stated that there appeared to be an excessive amount of redundant work. (9, 15)

RESPONSE:

The Department has carefully developed and structured various provisions of the General Permit to clearly identify the studies and submissions that are absolutely necessary to minimize the economic burden of compliance with the National CSO Control Strategy. The Department does not believe that the studies specified in the General Permit that are specific to each element of a combined sewer system have been previously performed. However, if a permittee has performed the analyses and developed the feasibility studies and cost and performance analyses or can utilize some, or all, of the information from previous studies to develop the submissions specified in the General Permit, the Permittee is encouraged to do so, in consultation with the Department. Given the desire to coordinate the studies derived from the General Permit with the TMDL/WLA and UAA Processes, if applicable, the Permittee is requested to present this information to the Department for consideration as soon as possible and preferably no later than 60-days after the Effective Date of the Permit. However, it should be noted that the studies are site-specific evaluations and the use of information from previous feasibility studies and cost and performance analyses does not waive a Permittee's obligation to comply with the Public Participation Program requirements of the General Permit.

9. COMMENT:

Reference is made to the Fact Sheet, Page 2 of 12, and to Part 0, Section 3, Page 24 of 27, of the Draft Permit. This section of the Draft Permit states that owners of CSOs are being required "to develop and evaluate the feasibility of pathogen control technologies to meet the requirements of the Federal Clean Water Act." The Edgewater Municipal Sewerage Authority objects to this requirement for several reasons. Although the Authority voluntarily acted to separate nearly ninety-percent (90%) of its combined sewers at a cost of approximately \$2,000,000.00, it was deemed non-cost effective to separate the remaining ten percent (10%) of the system which effort was estimated to cost an additional \$1,200,000.00. Thus, the Authority, with the approval of the Department and in conjunction with the Borough of Fort Lee, installed a netting chamber upstream of the remaining CSO outfall (owned by the Borough of Fort Lee). The netting chamber is considered to be in compliance with the United States Environmental Protection Agency's Nine Minimum Control Measures as identified in the National CSO Control Policy. The Authority expended over a quarter of a million dollars to design and install the netting chamber and has expended additional funds to maintain the chamber since installation, in reliance upon the Department's previous determination that this capital improvement would bring the Authority's remaining CSO into compliance with State regulations. The Authority requests that the Department seriously consider the Authority's previous expenditures associated with CSO compliance efforts when evaluating the Authority's conclusions related to installation of pathogen control technologies. (18)

RESPONSE:

The Department recognizes the achievements that the Edgewater Municipal Utilities Authority (EMUA) has made in minimizing the impact of its Combined Sewer System and associated Combined Sewer Overflow Points on the waters of the State. The Department assisted the Authority in developing its Long-term Solids/Floatables Control Plan (The sewer separation project referenced by the Authority) by providing planning and design grants of \$190,660.00 and \$113,494.00. The Department further assisted in the

implementation of the Authority's selected plan by providing \$1,762,992.00 in low interest loans through the State Revolving Fund Loan Program.

During the development and selection of the Long-term Solids/Floatables Control Plan, the Department advised the EMUA, and its representatives, that the National CSO Control Policy would obligate the Authority to bring all CSO Points into compliance with the technology-based and water quality-based requirements of the Federal Clean Water Act and how this obligation would be applicable to any remaining CSO Points.

As an owner and/or operator of a portion of a combined sewer system that conveys wastewater to a Combined Sewer Overflow Point (A CSO Point in the Borough of Fort Lee.), the Authority is required to comply with the provisions of the permit that are applicable to the remaining portions of the combined sewer system depending upon the type of facilities it owns and/or operates. If the Authority has permanently sealed and eliminated all CSO Points that were owned and/or operated by the Authority then the provisions of Part O, 3 b, Cost and Performance Analysis for Combined Sewer Overflow Points Operation, may not apply.

10. COMMENT:

As detailed in the City's December 17, 2002 correspondence to Commissioner Bradley M. Campbell of the NJDEP regarding the mandated development and implementation of a CSO Discharge Characterization Study Monitoring Program Proposal and Work Plan, the City of Hackensack continues to be outraged by both the existing and new requirements being imposed by the NJDEP on the City's Combined Sewer Overflow (CSO) facilities.

The City has always responded to NJDEP's requirements in an expeditious manner, already expending \$9M in taxpayer dollars to ensure compliance with NJDEP's CSO initiatives.

It continues to be the City's opinion that we have already expended an enormous amount of taxpayer dollars on CSO mandated requirements.

It is the City's understanding that the current requirements and compliance schedules as stated in its existing General Permit NJ0105023 will remain in effect along with the associated costs for the implementation of those requirements which will be in excess of the \$9M already expended by the City for mandated CSO initiatives. In addition, new provisions are proposed to be incorporated into the revised General Permit that will provide for the development of a CSO Long-term Control Plan (LTCP), imposing additional costs onto already fiscally impecunious CSO communities.

Subsequent to the development of a LTCP, will the State eventually require the implementation of that plan at yet another cost? How many more requirements will be imposed by the NJDEP and at what cost to CSO communities? When is enough, enough? (10)

RESPONSE:

The Department recognizes the significant efforts the City has made and the costs it has incurred in eliminating dry weather overflow and controlling the discharge of solids/floatables materials. The Department appreciates the City's efforts has spent and recognizes that regulatory compliance can be a significant economic burden to the local government units.

To ease the fiscal impact of such compliance on local government units, the Department is implementing a phased approach for CSO controls. It also has developed programs to provide financial assistance to local government units for the planning, design and construction of the needed Combined Sewer System infrastructure improvement projects.

However, the Department is not in the position to waive the requirement that the City comply with the provisions of the General Permit. Compliance with the National CSO Control Policy is a requirement of the Federal CWA. The National Combined Sewer Overflow Control Policy requires all CSO permittees to immediately undertake a process to develop CSO LTCPs which include the evaluation of alternatives for attaining compliance with the CWA, including compliance with water quality standards and protection of designated uses.

The Department can only waive the requirements of the National CSO Control Policy as it pertains to a combined sewer system if all CSO Points associated with the specific combined sewer system are eliminated. Several communities have selected sewer separation and CSO Point elimination, as final plan.

The alternative to the elimination of all CSO Points is to bring all CSO Points into compliance with the Federal Clean Water Act. The phased approach taken and reflected in this General Permit is to evaluate the feasibility and determine the costs associated with bringing the CSO Points into compliance with State Surface Water Quality Standards. When, the TMDL/WLA and, if necessary, the UAA processes are complete, the

CSO control implementation needs will be established. Until that time, the Department does not know how much additional control will be required.

The commenter is correct in observing that the General Permit requires only the performance of feasibility studies and does not require implementation of a specific CSO LTCP at this time. Implementation of a CSO LTCP will be required, if necessary, at a later date through a subsequent permit action after the studies required by this General Permit and the TMDL has been completed, including UAA Processes, if applicable.

11. COMMENT:

Many of the comments submitted to the Department included concerns over the cost of implementing the proposed General Permit conditions. It is NY/NJ Baykeeper's belief that the affected wastewater treatment facilities are overstating their obligations under the proposal, and, therefore, overestimating the actual cost to implement the proposal. The Sewerage Authorities should review the Department's Financing Program that allows participants to borrow money at extremely low interest rates. Additionally, the Department has recently included even lower rates for qualified participants under the Smart Growth Initiative. These include projects serving an approved Urban Center and that eliminate or improve combined sewer overflows. (15)

RESPONSE:

The Department acknowledges the commenter's accurate mention of the low-cost financing available to CSO permittees to construct needed CSO remediation projects through the Environmental Infrastructure Financing Program (EIFP) and offers the following additional information. Until recently, all project sponsors received a loan for half of the project costs from the Trust at market rate and a loan for the remaining project costs from the Department at 0% interest. However, in order to advance Governor McGreevey's smart growth initiative, the Department has made some significant changes to the EIFB beginning in FFY2003, which are being continued in the current Priority System Proposal. These changes offering the "Smart Growth Financing Package" modified the percentage of project costs the Department and the New Jersey Environmental Infrastructure Trust for certain project categories including CSO Abatement Projects. As a result, for the construction of CSO Abatement Projects, the Department now provides 75% of the project costs at 0% interest, while the Trust provides 25% of the project costs at market rate. Under last year's financing program, this translates to the award of a 20-year loan with an effective interest rate of 1.1%.

For additional information regarding the availability of assistance under the Financing Program please refer to the **Clean Water Financing Proposed Priority System, Intended Use Plan, and Project Priority List for Federal Fiscal Year 2005** or visit the Division of Water Quality's website for the **Clean Water Financing Program** at <http://www.nj.gov/dep/dwq/cwpl.htm>.

12. COMMENT:

The proposed regulations also address maximizing capture of wet weather flows in combined sewer collection systems. In many combined systems, the collection system and the downstream treatment plant are owned by the same entity. However, this is not the case in Camden City and Gloucester City where the Cities own their collection systems and the Camden County Municipal Utilities Authority (CCMUA) owns the downstream sewage treatment plant. In such cases, it is essential that maximization of wet weather capture in collection systems, required through general CSO permits, be closely, coordinated with maximization of wet weather capture in treatment plants, required in specific NJPDES permits. I recommend that, in such cases, a global analysis of both the collection system and treatment plant is made, rather than two separate studies conducted independently of each other. (11)

RESPONSE:

Generally, there are few combined sewer systems (CSSs) in New Jersey in which the entire collection, conveyance, and treatment facilities are owned and/or operated by a single entity. For the most part, CSSs are subject to fragmented ownership and operational responsibilities. The General Permit for Combined Sewer Systems was developed to compensate for these fragmented relationships. The permit has the ability to bring the effective regulation of these systems statewide under one regulatory umbrella and to unify control strategies and compliance schedules.

The activities proposed under the General Permit are restricted to developing cost and performance relationships for selected facilities as defined under the permit. The requirements are applicable only to Combined Sewer Systems (CSSs), Combined Sewer Overflow Points, Combined Sewer Overflow Control

Facilities and Combined Sewer Collection and Conveyance Systems. The feasibility studies are to be site-specific feasibility studies that can be completed as individual efforts without the need for a “global analysis. The General Permit does not require the selection of a final plan, which involves the assertion of preference of one set of alternatives over another.

In future administrative actions, the Department will propose to modify or revoke and reissue other NJPDES permits applicable to the Domestic Treatment Works (DTW) that receive and treat wastewater generated from CSSs by adding the appropriate CSO LTCP development provisions applicable to treatment facilities. These provisions will compliment those contained in this General Permit by requiring the determination of the feasibility and cost of receiving and treating additional sewage flows at the DTW.

Irrespective of the above, the Department recognizes the merit and the economy afforded through joint efforts or unified approaches to this and other facility planning efforts. As noted in the Response to Comment No. 3, the Department is prepared to work closely with the regulated communities to accommodate such efficient and cost-saving agreements between appropriate entities to the extent practical. The Department recognizes that joint efforts by the CSS entities has been a formula for success and is prepared to work with the interested parties in the fostering of such efforts to the extent practical.

13. COMMENT:

The City of Paterson is of the opinion that a burden is being placed on the City to evaluate a variety of technologies with varying levels of effectiveness and to evaluate a variety of hydraulic conditions which would result in CSO discharges for a number of specified frequencies. The Department should undertake whatever work is required on its part to provide the specific criteria, which would be required of the Permittee. This would permit us to focus our limited financial resources on developing the required solution rather than evaluating a number of scenarios, most of which would be ultimately dismissed. (9)

RESPONSE:

As stated earlier, the National Combined Sewer Overflow Control Policy requires CSO permittees to immediately undertake a process to develop CSO LTCPs which include the evaluation of alternatives for attaining compliance with the CWA, including compliance with water quality standards and protection of designated uses. CSO LTCPs must ensure that both the technology-based and water quality-based requirements of the Federal CWA are met. With respect to water quality-based requirements, the National CSO Control Policy provides that “development of the long-term plan should be coordinated with the review and appropriate revisions of Surface Water Quality Standards and implementation procedures on CSO-impacted receiving waters to ensure that the long-term controls will be sufficient to meet water quality standards” (See N.J.A.C. 7:14A-11, Appendix C.).

The most significant water quality concern directly associated with CSOs is pathogens. The State Surface Water Quality Standards (See N.J.A.C. 7:9-1.5(h) 5i) prohibit regulatory mixing zones for indicators of pathogenic quality. Water quality-based effluent limitations for indicators of pathogenic quality are developed by applying the current surface water criteria at the point of introduction to the waters of the state or at the “end-of-the-pipe.” The Department recognizes that CSO Points discharge pathogens in concentrations significantly greater than any State Surface Water Quality Criteria for pathogens. Therefore, the Department has proposed that Permittees develop and evaluate control alternatives, or combinations of alternatives, and undertake cost and performance evaluations of pathogen control technologies to assess the feasibility of implementing pathogen controls including those that meet the current surface water criteria for pathogens.

The Department has initiated a process that facilitates the coordination of the CSO LTCPs with the numerous State and Federal regulatory programs and initiatives. Among the various influencing factors associated in developing a CSO LTCP are the Total Maximum Daily Load (TMDL)/Waste Load Allocation (WLA) process and Use Attainability Analyses (UAA).

UAAs are structured scientific assessments of the physical, chemical, biological and economic factors affecting the attainment of a designated beneficial use. The outcome of a UAA may range from the assignment of effluent limitations equivalent to State Surface Water Quality Standards criteria for bacterial quality to no limitations at all. The UAA may provide sufficient information for the State to determine that the designated use is not attainable and also may provide the basis for adopting an alternative use and the criteria to protect that use. The cost and performance analyses proposed in the General Permit may assist in developing a UAAs and can serve as part of the basis for the establishment of discharge limitations that may be less restrictive than the existing surface water criteria.

States, municipalities or consultants may collect the data and conduct the analysis to support the UAA. The State is responsible for evaluating the data and information. Only the State may determine whether the use is attainable. If the determination results in a proposed revision to water quality standards, the State must provide the UAA and the proposed revision to the public for review and comment and to EPA for approval or disapproval.

Revisions to water quality standards based on CSO discharges can be considered when the controls necessary to attain the standard would cause “substantial and widespread economic and social impact.” EPA policy allows states to revise their water quality standards based on the water quality improvements to be achieved by the maximum level of CSO control that would not cause substantial and widespread social and economic impacts on the community. Thus CSS Permittees may be required to implement control measures that will bring some improvement to the receiving water body, but, may not bring receiving waters into complete compliance with Surface Water Quality Standards and designated usage. Such levels of control would then lie somewhere between the current surface water criteria and the no-action alternative.

There is an alternative to being authorized under the General Permit and participating in the specified studies. As provided in Part I, A, 4, a, of the General Permit, any permittee authorized under this permit may request to be excluded from authorization under this permit by applying for an individual DSW permit. An individual permit may include more stringent requirements based on site-specific conditions. The Department could waive a permittee’s obligation to participate in the CSO LTCP process, provided it commits to an enforceable commitment to design, construct and operate a plan that eliminates the CSO Points in an appropriate time period.

14. COMMENT:

Disinfection of combined sewer system discharges would certainly reduce pollutant loadings to the Delaware River to some extent. However, when one considers the velocity of the storm flows exiting the CSO systems and the need for detention time in order for disinfecting chemicals to achieve any efficacy, it seems that requiring disinfection at CSO’s may not be reasonably feasible, except at a cost that might dwarf the expected benefits. (11)

RESPONSE:

The General Permit proposes a process to conduct structured engineering studies including scientific assessments of the physical, chemical, biological and economic factors associated with controlling the discharge of pathogens from CSO Points. The studies, when completed, should demonstrate the feasibility and economics of implementing pathogen controls including disinfection. Please refer to the Response to Comment No. 13 for more discussion on how the feasibility studies and Cost and Performance Analyses will be used.

15. COMMENT:

The cost and performance analysis requires the Authority to develop and evaluate several different disinfecting technologies. Our engineers are unaware of a widespread use of these technologies in CSO applications. The State would be better served to develop several demonstration projects to determine whether or not these technologies are actually successful prior to requiring each community to study their application. Preliminary discussion with the Authority’s engineers has raised serious concerns that these technologies are not suitable for the physical and hydraulic conditions present within most communities. Since analysis of these technologies without pilot testing would be speculative at best, the analyses performed would not be reliable in any degree of certainty. (16)

RESPONSE:

The effective management of CSSs and the control of CSOs may involve the development and application of innovative designs and alternative technologies requiring the services of consultants that are adequately qualified to address the permit requirements.

The first important step begins in the development of an effective Request for Proposal, or RFP, for the solicitation of consulting engineering services. During the process of preparing qualifications and proposals it is important that the prospective consultants are provided with the information needed to guide the development of their demonstration of technical expertise and proposed approach. The provision of appropriate information to prospective consultants may allow them to recognize other specific information or services that the local government entity may need for developing and implementing an effective CSO LTCP strategy.

The General Permit requires permittees to develop and evaluate high rate disinfection technologies with rapid primary treatment processes. The General Permit identified several viable technologies that must be evaluated, as a minimum. These rapid primary treatment processes include Screening Technology, Vortex/Swirl Separation and Ballasted Flocculation.

These technologies have been successfully applied to varying degrees in the control of stormwater; combined sewers overflows and in the production of potable and industrial water supply.

16. COMMENT:

The 303(d) list of impaired waters within the State of New Jersey clearly illustrates that fecal coliform contamination of receiving waters is not limited to those waters with CSO discharges. Many freshwater waterbodies are not attaining water quality standards for fecal coliform due to non-point source contamination from wild and domestic animals. Accordingly, controlling or disinfection of CSO discharges, alone may not be adequate to meet water quality standards. (12)

RESPONSE:

The General Permit requires the development of CSO LTCPs, more specifically, to evaluate the feasibility of controlling the discharge of pathogens from CSO Points. CSOs are a major source of pathogens. The Department recognizes that controlling CSO discharges alone will not be adequate to meet State Surface Water Quality Standards, therefore, the Department is implementing other programs and water quality improvement initiatives to address the contribution of pathogenic organisms from other sources.

In accordance with Section 303(d) of the Federal Clean Water Act (CWA) (33 U.S.C. 1315(d)), States are required to prepare and submit to the USEPA a report that identifies waters that do not meet or are not expected to meet surface water quality standards (SWQS). This report is commonly referred to as the 303(d) list. Those waterbodies, which are listed on the 303(d) list, are water quality limited waterbodies. Total maximum daily loads (TMDLs) are required, under Section 303(d) of the Federal Clean Water Act, to be developed for waterbodies that cannot meet surface water quality standards after the implementation of technology-based effluent limitations. A TMDL must be developed for each individual pollutant in these water bodies based on an agreed upon schedule between the State and EPA.

TMDLs represent the assimilative or carrying capacity of the receiving water taking into consideration point and nonpoint sources of pollution, natural background, and surface water withdrawals. A TMDL is developed as a mechanism for identifying all the contributors to surface water quality impacts and setting goals for load reductions for specific pollutants as necessary to meet surface water quality standards. A TMDL establishes Waste Load Allocations and Load Allocations for point and nonpoint sources, respectively. Where TMDLs are required to address documented surface water quality impairment, allocations are made to the varying sources contributing to the water quality problem in order to reduce the total pollutant load received by the waterbody. Load reduction goals established through TMDLs are achieved through the issuance of wasteload allocations for points source discharges and load allocations for nonpoint source discharges.

Since nonpoint source pollution, by definition, does not come from discrete, identifiable sources, load allocations would consist of the identification of categories of nonpoint sources that contribute to the parameters of concern. The load allocation would also include specific load reduction measures for those categories of sources, to be implemented through best management practices (BMPs) including local ordinances for stormwater management and nonpoint source pollution control, headwaters protection practices, or other mechanisms for addressing the priority issues of concern.

In September of 2002, the NJDEP signed a Memorandum of Agreement with the USEPA in which New Jersey committed to produce 120 coliform TMDLs for waterbodies that were listed as pathogen impaired segments. The pollutant of concern for these TMDLs is pathogens, the presence of which is indicated by elevated concentrations of fecal coliform bacteria. Nonpoint sources are the primary contributors of fecal coliform loads in the listed streams. Storm events transport fecal coliform from sources such as geese, farms, and domestic pets into the receiving water. Nonpoint sources may also include steady state inputs from sources such as failing sewage conveyance systems and failing or inappropriately located septic systems.

The Department has developed a variety of management strategies designed to eliminate or reduce various fecal coliform sources. Each management strategy has one or more entities that can take the lead responsibility for the implementation of the recommendations. The implementation phase is a coordinated effort among the representatives from the NJDEP, the municipal and county government, and the watershed. Various funding sources are available to assist in accomplishing the management strategies.

For more information concerning the **Memorandum of Agreement Between EPA Region 2 and NJDEP Schedule to Establish TMDL's**, please visit the Division of Watershed Management's website at <http://www.state.nj.us/dep/watershedmgt/tmdl.htm#schedule>.

17. **COMMENT:**

The draft permit is not clear as to which permittee has responsibility for particular sections and appears to provide some responsibility to the wrong entity. Section 0.3 divides entity responsibilities into three groups: Combined Sewer Overflow Points Operation; Combined Sewer Collection and Conveyance Systems; Combined Sewer Collection and Conveyance Systems and Combined Sewer Overflow Control Facilities.

Section A.3 a.i. defines Combined Sewer Collection and Conveyance Systems as: "...any portion of a Combined Sewer System excluding the Combined Sewer Overflow Control Facilities." By this definition, The Village of Ridgefield Park falls into category "d" above since they own and operates both the combined sewer system and two CSO Control facilities.

The Bergen County Utilities Authority (BCUA), however, owns and operates interceptor sewer (conveyance system to the DTW) and three other CSO Control Facilities that service the Village. The anticipated conflict develops in that the Village of Ridgefield Park will need to develop and evaluate Control Measures that result in an increase in the conveyance of wastewater from CSO Control Facilities to the DTW for treatment when it has no control over the conveyance of wastewater to the DTW. Thus, it appears that the division of responsibility and definition of terms in the modified permit leads to a paradox that needs to be addressed and/or clarified. (12)

RESPONSE:

As explained in the Response to Comment No. 12, the General Permit for Combined Sewer Systems was developed to address the problem of the fragmented owner/operator responsibilities of combined sewer systems in New Jersey. The General Permit has been a valuable tool for integrating the planning efforts of multiple local government entities under a singular regulatory umbrella. It also has been beneficial in fostering joint or group efforts towards regulatory compliance.

As with the current General Permit for Combined Sewer Systems, permittees are required to comply with the provisions of the permit that are applicable to the type of facilities they own and/or operate. The General Permit builds upon the existing provisions of the General Permit and requires permittees to undertake cost and performance analysis for certain defined control or performance objectives applicable to the type of facilities they own and/or operate. The existing definitions contained in the General Permit interpret the applicability of the requirements of the first issuance of the General Permit contained in Part I A through L.

The BCUA will be required to perform the analyses for the facilities they specifically own and operate. Likewise, Ridgefield Park Village will be required to perform similar studies for the facilities the Village owns and/or operates. For additional clarification of the applicability of the permit requirements, for these specific types of facilities, please refer to the Response to Comment No. 18, below, and/or contact the Municipal Finance and Construction Element at (609) 292-5563 for further assistance.

18. **COMMENT:**

The draft permit is not clear as to which permittee has responsibility for particular sections. Section 0.3 on page 24 of 27 divides responsibilities into three groups:

1. Combined Sewer Overflow Points Operation under "b";
2. Combined Sewer Collection and Conveyance Systems under "c"; and
3. Combined Sewer Collection and Conveyance Systems and Combined Sewer Overflow Control Facilities under "d".

The BCUA owns and operates the conveyance system and interceptor sewers that service all of the tributary municipalities; however, it only owns and operates three of the CSO Control Facilities within the service district. The other CSO Control Facilities are owned and operated by the individual municipalities (Fort Lee, Hackensack, and Ridgefield Park). Accordingly, the ownership and, thus, the responsibility for completing various tasks under the permit are divided. The areas of responsibility for individual permittees need to be better defined within the permit so that there are no ambiguities as to which tasks must be completed. Perhaps the ambiguities could be eliminated if the requirements under the permit were separated by each segment of a combined sewer system, i.e. 1) collection, 2) conveyance, and 3) control facilities. (13)

RESPONSE:

The following is offered to assist in providing clarification on the applicability of certain provision of the draft permit to the various components of a combined sewer system.

Paragraph O, 3, b, Cost and Performance Analysis for Combined Sewer Overflow Points Operation.

This section is applicable to all permittees that own and/or operate Combined Sewer Overflow Points (CSO Point).

Paragraph O, 3, c, Cost and Performance Analysis for Combined Sewer Collection and Conveyance Systems operation.

This section is applicable to all permittees of Combined Sewer Collection and Conveyance Systems located upstream of a Combined Sewer Overflow Control Facility, or regulator, that has the potential to divert wastewater to the waters of the State through a CSO Point.

Paragraph O, 3, d, Cost and Performance Analysis for Combined Sewer Collection and Conveyance Systems and Combined Sewer Overflow Control Facilities Operation.

This section is applicable to all permittees of Combined Sewer Collection and Conveyance Systems and Combined Sewer Overflow Control Facilities located between the Combined Sewer Overflow Control Facility, or regulator, that has the potential to divert wastewater to the waters of the State through a CSO Point and the headworks of the DTW. The section also applies to the Combined Sewer Overflow Control Facilities, or regulators, that have the potential to divert wastewater to the waters of the State through a CSO Point. The objective is to evaluate the cost of increasing the conveyance of wastewater to the DTW by modifying the Combined Sewer Overflow Control Facilities, or regulators, and increasing the conveyance capacities/capabilities of the conveyance system between the regulators and the DTWs.

The Department believes the General Permit provides a clear delineation of the applicability of specific provisions. The Department is prepared to meet with a permittee and/or his representative to provided additional assistance in understanding the applicability of the provisions of the permit. Those seeking additional assistance are encouraged to contact the Municipal Finance and Construction Element at (609) 292-5563 to schedule a convenient appointment.

19. **COMMENT**

Please explain how this General Permit will affect existing agreements between the Department and wastewater treatment facilities to come into compliance with the “Nine Minimum Controls.” (15)

RESPONSE:

The requirements of this General Permit are applicable only to Combined Sewer Systems, Combined Sewer Overflow Points and associated conveyance systems and are not applicable to the operation of wastewater treatment facilities. There are Judicial Consent Orders (JCOs) and Administrative Consent Orders (ACOs) to which the Department is a party which require the incorporation of the National CSO Control Policy’s Nine Minimum Control Measures. These ACOs and JCOs continue to be enforceable and permittees’ who are party to them are expected to continue to comply them. In the event there is a conflict between the ACO/JCO and the new permit, it is the Permittee’s obligation to raise this concern with the Department and request clarification and/or modification of the appropriate requirement.

20. **COMMENT:**

The Draft Permit outlines that the contents of the Long-Term Control Plan include modeling of CSO discharge and of the Hudson River, development of a public participation process, evaluation of alternatives, development of cost estimates, hydraulic analysis to determine maximum conveyance to the treatment facility, etc. The Authority believes that, in its case, the costs to accomplish these tasks would be significantly out of proportion with any gain in Hudson River water quality. (18)

RESPONSE:

The National Combined Sewer Overflow Control Policy requires all CSO permittees to immediately undertake a process to develop CSO LTCPs which include the evaluation of alternatives for attaining compliance with the CWA, including compliance with water quality standards and protection of designated uses.

In order to design a CSO control plan adequate to meet the requirements of the CWA, a permittee should have a thorough understanding of its sewer system, the response of the system to various precipitation events, the characteristics of the overflows, and the water quality impacts that result from CSOs. The permittee should adequately characterize through monitoring, modeling, and other means as appropriate, for a range of storm events, the response of its sewer system to wet weather events including the number, location and frequency of

CSOs, volume, concentration and mass of pollutants discharged and the impacts of the CSOs on the receiving waters and their designated uses.

The Department is coordinating the development of CSO LTCPs with the TMDL process to minimize cost of CSO LTCP development to permittees. The General Permit does not propose that permittees monitor or model the receiving waterbodies. The permittees have not been required to determine the impacts of the CSOs on the receiving waters and their designated uses. The General Permit only adds new provisions that will require owners and/or operators of combined sewer systems to develop and evaluate alternative control measures for the control of pathogens and to formulate cost and performance relationships.

The purpose of these studies is to evaluate the feasibility and cost of implementing pathogen control measures. In the absence of these studies, it is premature to reach the conclusion drawn by the commenter that the cost of these studies is significantly out of proportion with any potential gains in the quality of a receiving waterbody.

21. COMMENT:

One commenter questioned where compliance with the State Water Quality Standards for bacterial quality should be determined. (1)

RESPONSE:

Currently, the State Surface Water Quality Standards (See N.J.A.C. 7:9-1.5(h) 5) prohibit regulatory mixing zones for indicators of pathogenic quality when establishing water quality-based effluent limitations for indicators of pathogenic quality. Water quality-based effluent limitations for indicators of pathogenic quality are developed by applying the current surface water criteria at the point of introduction to the waters of the State or at the “end-of-the-pipe.”

22. COMMENT:

The limits also do not appear to address existing water quality or use of the water body. (9)

RESPONSE:

State Surface Water Quality Standards and Surface Water Criteria are established for the protection and support of existing water quality and designated uses. The goal of CWA section 101(a)(2), which guides the water quality standards program, is to provide, “wherever attainable . . . water quality . . . for the protection and propagation of fish, shellfish and wildlife, and recreation in and on the water...” Waterbodies with a surface water classification which do not include swimming as a designated use must be supported by a Use Attainability Analysis (UAA). Long-Term CSO Control Plans must ensure that both the technology-based and water quality-based requirements of the Federal CWA are met. With respect to water quality-based requirements, the National CSO Control Policy provides that “development of the long-term plan should be coordinated with the review and appropriate revisions of Surface Water Quality Standards and implementation procedures on CSO-impacted receiving waters to ensure that the long-term controls will be sufficient to meet water quality standards” (See N.J.A.C. 14A-11, Appendix C).

The studies required by this General Permit will assist in the determination of the feasibility and cost of complying with current and future Surface Water Criteria for bacteria applicable to appropriate surface water. The ranges of CSO Control Objectives required to be considered in the development of cost and performance analyses under the General Permit were developed with the recognition of the need to consider more stringent control requirements for certain classifications of waters. Thus, the requirements of this General Permit acknowledge and address existing water quality standards and designated usage.

23. COMMENT:

One commenter noted in the “Fact Sheet for the draft General Permit No. 0105023,” in 2002, the receiving waters with CSO discharges were removed from the 1996 Impaired Waterbodies Lists 303 (d) for fecal coliform based on data collected by the Interstate Environmental Commission in the NJ /NY Harbor shared waters. In the Final Integrated List these waters were moved to Category 3, which indicates that additional data is necessary prior to the development of a final decision regarding impairments of these waters by pathogens. The implementation of the modified permit will require that the CSO municipalities fund the cost and performance analysis for the CSO Long-term Control Plans prior to the NJDEP knowing for sure that the receiving waters are being impaired by CSO discharges. The final decision regarding impairment of these receiving waters should be established prior to the implementation of the modifications to the General Permit. Another Authority also objected to the program as proposed since the Department does not distinguish those water bodies that are impaired for the pathogens, from those that are not, therefore requiring unnecessary

analysis and cost. The commenter suggested the Permit is shifting the responsibility of determining this impairment onto the CSO communities. (16) RESPONSE:

In this permit action, the Department is modifying the General Permit to require owners and/or operators of Combined Sewer Systems to develop and evaluate alternative pathogen control measures and to formulate cost and performance relationships. A receiving waterbody need not be on a List of Impaired Waterbodies before the Department can require a permittee to undertake this work.

It is well recognized that Combined Sewer Overflows are a human health concern because they can create the potential for exposure to disease causing pathogens, including protozoa, bacteria and viruses. Because CSO discharges include raw sewage, they contain a combination of untreated human waste and pollutants discharged by commercial and industrial establishments, and also have a significant storm water component, that includes pollutants from urban and rural runoff. These pathogens, solids, and toxics may be discharged directly to the waters of the state during wet weather events through CSOs. Exposure to CSO contaminants through swimming or other contact can lead to infectious diseases such as hepatitis, gastrointestinal disorders, dysentery, and swimmer's ear infection. Other forms of bacteria can cause typhoid, cholera, and dysentery. Human health also can be impacted from ingesting fish or shellfish contaminated by CSO discharges.

The studies required to be conducted pursuant to this General Permit are required by, and consistent with, the Federal Clean Water Act, 33 U.S.C. 1251 et seq. (CWA) and the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., and their implementing rules and policies. Specifically, in 1994 United States Environmental Protection Agency issued the Federal Combined Sewer Overflow Policy (59 FR 18688, April 19, 1994) (National Policy). The CWA requires that permits must be issued consistent with this National Policy. 33 U.S.C. 1342(q). New Jersey incorporated the National Policy at N.J.A.C. 7:14A-11, Appendix C, and requires that all permits issued for discharges from CSOs shall include applicable provisions of the Policy. (See N.J.A.C. 7:14A-11.12.)

There are three policy objectives of the National Policy. The first is to ensure that if CSOs occur, they are only as a result of wet weather. The second is to bring all wet weather CSO discharge points into compliance with the technology-based and water quality based requirements of the CWA. The third objective is to minimize water quality, aquatic biota, and human health impacts from CSOs.

The National Policy requires CSO permittees to immediately undertake a process to develop CSO LTCPs which include the evaluation of alternatives for attaining compliance with the CWA, including compliance with water quality standards and protection of designated uses. Moreover, regardless of the National Policy, all discharges from CSOs must meet both the technology based and water quality based requirements of the CWA. Pursuant to N.J.A.C. 7:14A-13.5, if the Department determines that a discharge could cause, or have the reasonable potential to cause or contribute to an excursion above the State Surface Water Quality Standards, N.J.A.C. 7:9B, the Department is to establish water quality based effluent limitations. Water quality based effluent limitations for indicators of pathogenic quality are developed by applying the current surface water criteria at the point of introduction to the waters of the state or at the end of the pipe. The Department recognizes that CSO points discharge pathogens in concentrations significantly greater than the surface water quality criteria for pathogens, and thus, cause or contribute, or have the reasonable potential to cause or contribute, to excursions above the standards. Therefore, it is reasonable and appropriate for the Department to require that Permittees conduct the LTCP, even if the receiving waterbody is not presently designated as "impaired" for pathogens.

However, the Department would like to note that there is continued debate over the appropriate listing for the New York/New Jersey Harbor shared waters. In 1996, these waters were listed as being impaired for fecal coliform. The Department assessed monitoring data collected by the Interstate Environmental Commission using its **Integrated Water Quality Monitoring and Assessment Methods** dated December 17, 2002. The Department assessed these waters as unimpaired in its Draft 2002 Integrated List. However, prior to adopting the 2002 Integrated List, the Department determined that the ambient monitoring data did not seem to accurately reflect the impact of CSOs under wet weather conditions, since the data was not collected close to the shoreline, where CSOs are located. Thus, in the final 2002 Integrated List, these waters were moved to Sublist 3, indicating that additional data is necessary in order to make a final decision regarding pathogen-related impairment of these waters. The Department is taking steps to collect this additional data.

24. COMMENT:

It does not appear that the Department has established a Total Daily Maximum Load (“TMDL”) for fecal coliform in the Hudson River. It seems logical that such an evaluation should precede a limit on loading to the river from CSOs. (18)

RESPONSE:

The National CSO Control Policy requires permittees to undertake the studies required in the General Permit whether or not a TMDL has been established. Please refer to the Response to Comment No. 13 for an explanation of how the studies required under the General Permit are important and necessary in the development of responsible and practicable TMDLs/WLA. Furthermore, the General Permit does not place additional limitation on CSO discharges at this time.

25. COMMENT:

The permit does not address the effect of stormwater discharges to the waterways, which may be a larger portion of the pathogen loading than CSO’s in some instances. This again places the burden on the older less affluent communities to address the problems. The Department’s reliance on information contained in the New York/New Jersey Harbor Estuary Program Comprehensive Conservation and Management Plan to draw its conclusion that the CSO’s are responsible for 90% of the pathogens within the New York harbor is not valid since the study was based upon the CSO flows from New York also. The CSO flows from New York into the harbor can reasonably be assumed to be substantial larger than the CSO flows from New Jersey, which are limited to a small land area. In addition, the New Jersey wet weather discharges into the harbor has a sizable component from storm sewers. (16)

RESPONSE:

The commenter is referencing the New York-New Jersey Harbor Estuary Program Final Comprehensive Conservation and Management Plan March 1996 (NY/NJ HEP CCMP). NY/NJ HEP CCMP is a comprehensive plan for the Harbor/Bight Watershed on a regional scale that was endorsed by the governors of the State of New Jersey and New York and the Administrator of US EPA Region II. One of the activities included in the plan development was identifying the significant pollution sources impacting the Harbor/Bight Watershed. In the chapter entitled, “MANAGEMENT OF PATHOGENIC CONTAMINATION,” the plan identified sources of pathogenic contamination and characterized the relative influence of certain sources of fecal coliform to the Harbor/Bight Watershed. On page 164, the plan indicated that 89.0 % of the fecal coliform Loadings were from Combined Sewer Overflow Points.

The Department did not rely upon the NY/NJ HEP CCMP as the basis for the issuance of this General Permit. The General Permit is structured for the development of CSO LTCPs, more specifically, to evaluate the feasibility of controlling the discharge of pathogens from CSO Points. As stated earlier, the Department is implementing other initiatives to address the contribution of pathogenic organisms from other sources through other water quality improvement programs and initiatives. The Department recognizes that point and nonpoint sources of pathogens from New York State and New Jersey contribute to the surface water quality.

Please refer to the Response to Comment No. 16 for further discussion on how the Department has developed a variety of management strategies designed to eliminate or reduce various fecal coliform sources other than combined sewer overflows.

26 COMMENT:

The performance objectives presented for pathogen control appear to be based on secondary treatment levels and do not address the impact of dilution in the water body. As CSO events would only occur during wet weather events, significant dilution would occur. This would indicate to us that the limits presented are overly restrictive and would place a significant financial impact on our community with little or no environmental benefit to show. (9)

RESPONSE:

The performance objectives are not based on secondary treatment; they are based on incremental levels of pathogen control. State Surface Water Quality Standards prohibit mixing zones when establishing water quality-based effluent limitations for indicators of pathogenic quality. Under current regulations, the establishment of water quality-based effluent limitations for indicators of pathogenic quality would not take into consideration the dilution effects of the receiving waterbody including those under wet weather conditions.

27. COMMENT:

The NJDEP has chosen to implement CSO pollution control requirements in a phased manner. While there are certainly some advantages to doing so, there are also some definite disadvantages. Specifically, a phased approach significantly increases the probability that the limited space within a combined sewer overflow chamber will be sub-optimally utilized. For example, solids and floatables controls may have been added to CSO systems without being mindful of the possible need to leave room for future disinfection facilities. CSO system owners may be forced to implement disinfection options that are unnecessarily costly because they weren't planned for when the solids floatables control systems were designed and installed. The NJDEP should identify the full range of CSO pollution control systems that are reasonably expected to be required so that better informed planning can be performed for this phase and future phases. (11)

RESPONSE:

The decision to proceed with a phased approach and integrating the CSO LTCP development process with the TMDL/WLA Process was determined to be in the best interest of the regulated community, as well as, the affected community, or persons who use and enjoy the downstream waters. The General Permit for Combined Sewer Systems was first issued as a draft general permit in 1994. During the public comment period, a similar concern that additional controls may be required beyond the proposed Solids/Floatables Control Measures was raised to which the Department offered the following response.

“Selected control measures should also be designed so that they may allow for cost effective expansion, or retro-fitting, in the advent that additional controls are subsequently determined to be necessary to meet State WQS, including existing and designated uses. The National Policy is at the initial stages of identifying and/or locating CSO Points, and issuing of permits which, for the first time, include requirements necessary to gradually bring this category of discharges into compliance with WQS in accordance with the Federal Clean Water Act. Initial activities are focused on the implementation of technology-based control measures. The need for additional control measures, to achieve compliance with State WQS, has not yet been determined or justified. Therefore, the technology-based control measures should be developed with consideration of the possible need for modification or even replacement to accommodate alternative discharge limitations.”

Throughout the administration of the CSO Control Program, including the implementation of Solids/Floatables Controls and Dry Weather Overflow elimination efforts, the Department acknowledged that CSOs were a source of pathogens and that additional control measures may be required in the future. With this acknowledgement, the Department advised permittees and their consultants to plan, design and construct the necessary Solids/Floatables Control Measures and any other infrastructure improvement or modification so that they may allow for cost effective expansion, or retro-fitting, in the advent that additional controls are deemed necessary.

To date, with the help of New Jersey's financial assistance from the New Jersey Sewerage Infrastructure Improvement Act grants and low interest loans from the New Jersey Environmental Infrastructure Financing Program, the CSO communities have completed the implementation of the Solids/Floatables Control Plans for approximately 50% of the CSO Points. While additional projects for Solids/Floatables Control are in various stages of implementation, information provided to the Department indicates that at least 420-tons per year of Solids/Floatables materials are either captured or otherwise prevented from being discharged from CSO Points to the waters of the State.

The current General Permit proposal is only to evaluate the feasibility of the implementation of pathogen control measures. The CSO Control objectives with regard to pathogen control (bacterial quality), or any other specific parameter, have not yet been identified. The studies required by the General Permit will lead to understanding of the feasibility of pathogen control and possibly to the identification of CSO control objectives. In the interim, the construction and operation of the Solids/Floatables Control Measures will continue to proceed to completion.

28. COMMENT:

In North Hudson Sewage Authority's (NHS) Draft Long-Term Solids/Floatables Control Plan (CH2MHILL, 1996), stated the following (underline emphasis added):

“Because the objective of the long-term solids/floatables control plan is to provide for permanent controls, the plan must also consider integration of proposed facilities with other infrastructure improvements and development planned for the study area, particularly along the Hoboken and Weehawken waterfronts. In addition, facility planning should consider regulatory drivers such as the

New York/New Jersey Harbor Estuary Program and EPA's National Policy. These national and intrastate CSO programs are likely to create pressures for controls on additional pollutants in CSO discharges other than solids/floatables that would be captured by a 0.5-inch bar screen. Facilities designed to control solids/floatables alone, would not be adequate to meet the current goals of these other programs and would therefore not be an appropriate expenditure of public funds in the long-term if they required replacement or retrofitting at a later date. Therefore, this long-term plan contains a discussion of current goals from all regulatory programs that might affect CSO control objectives in the long-term."

NHSA is in the midst of constructing \$26M in solids/floatables control facilities. The proposed NJDEP General Permit requiring pathogen control confirms the earlier concern, stated in 1996, that NJDEP would shift its emphasis to match the EPA's National CSO Strategy, and result in the likely need to remove or reconfigure S/F control facilities in already very space limited circumstances along the Hoboken, Weehawken and West New York waterfront. (19)

RESPONSE:

The Department CSO control program is the result of the integration of Federal and State regulatory mandates and regional water quality improvement efforts. These influences are outlined in the New Jersey Sewerage Infrastructure Improvement Act (SIIA), the National CSO Control Policy, and the New York/New Jersey Harbor Estuary Program Comprehensive Conservation and Management Plan (NY/NJ HEP CCMP). The General Permit requires only the evaluation of the feasibility of implementing pathogen control measures, not their implementation. As explained in the response to the previous comment, the Department had advised permittees that the technology-based control measures should be developed with consideration of the possible need for modification or even replacement to accommodate alternative discharge limitations.

29. COMMENT:

It is our understanding that additional requirements related to the development of CSO LTCPs applicable to the operation of wastewater treatment plants will come out at a later time. It is difficult to plan for the General Permit revision without knowing the latitude of what will be allowed at the plant. Most prominently, what wet weather blending policy will prevail? Lacking that answer, a comprehensive system-based decision is difficult. Both plants and sewer systems must be addressed together. (19)

RESPONSE:

Permittees of Combined Sewer Collection and Conveyance Systems and Combined Sewer Overflow Control Facilities are required to develop and evaluate control measures that may result in an increase in the conveyance of wastewater from CSO Control Facilities to the DTW for treatment. These are feasibility studies only. The General Permit does not require the implementation of pathogen control measures at this time.

The questions, in regard to the operation of the DTWs, are beyond the scope of this General Permit. The General Permit does not affect the operation of wastewater treatment facilities or DTWs. The requirements of this General Permit are applicable only to Combined Sewer Overflow Points, Combined Sewer Collection and Conveyance Facilities, Combined Sewer Overflow Control Facilities, and associated collection and conveyance system appurtenances authorized under the General Permit. The Department intends to modify or revoke and reissue other New Jersey Pollutant Discharge Elimination System (NJPDES) permits applicable to DTWs, that receive and treat sewage generated in or conveyed from combined sewer systems to add the provisions necessary and appropriate to coordinate the CSO LTCP planning activities of the DTW with those contained in this General Permit for the operation of the collection and conveyance systems by requiring the evaluation of the feasibility and cost of receiving and treating additional sewage at the DTWs.

With respect to the wet weather blending policy, US EPA requested public comments on the proposed policy addressing the practice of blending at publicly owned sewage treatment facilities during periods of high flow caused by rainfall or snowmelt (See Federal Register Vol. 68, No. 216, Friday, November 7, 2003). This proposed policy was available for comment until February 9, 2004. At the time of the preparation of this permit decision document a formal response or action to the Federal effluent blending policy has not been publicly noticed.

30. COMMENT:

Based on the Interstate Environmental Commission's (IEC) review and recent discussions with the Department's staff, we concur in general with the approach and new permit requirements outlined in the draft permit. We look forward to seeing the timely implementation of all permit provisions, including the Long-term Control Plans (LTCPs) requirements, throughout the New Jersey portion of the Interstate Environmental District. (20)

RESPONSE:

The Department appreciates the comment and looks forward to working with the IEC in advancing the CSO Abatement Controls aimed at improving the quality of interstate waters.

31. COMMENT:

This proposed regulatory action includes activities to ensure the development of the appropriate information to address four of the nine minimum LTCP elements as listed in the National CSO Control Policy. The four proposed elements include (1) development of a public participation process, (2) evaluation of alternatives, (3) cost performance considerations, and (4) maximization of wastewater treatment at existing POTW treatment plants.

While the Department's movement towards completion of all nine LTCP elements encourages us, we are disappointed that the real meaningful LTCP elements have not yet been addressed.

These include (1) consideration of sensitive areas, (2) operation plan revisions to include agreed-upon long-term CSO controls, (3) implementation schedule for CSO controls, and (4) post construction compliance monitoring program.

We request that the Department provide a timetable to indicate when these remaining elements will be completed. Additionally, we request that the Department explain why the "consideration of sensitive areas" element, identified at the December 18, 2002 Public Interest Group Meeting as an element that was to be included in the forth-coming permitting action, is not included in this draft permit. (15)

RESPONSE:

The commenter is correct in the observation that during the December 18, 2002 Public Interest Group Meeting, the Department had proposed to include the "consideration of sensitive areas" element in the General Permit. However, during the development of specific provisions of the General Permit, the Department determined that not all of the activities associated with this element could be completed at this time. In accordance with the National CSO Control Policy, to comply with the CSO LTCP Element "Consideration of Sensitive Areas," municipalities are to give highest priority to controlling overflows to receiving waters considered sensitive. For such areas, the CSO LTCP should:

1. Prohibit new or significantly increased overflows;
2. Eliminate or relocate overflows that discharge to sensitive areas wherever physically possible and economically achievable, except where elimination or relocation would provide less environmental protection than additional treatment; or
3. Where elimination or relocation has been proven to not be physically possible and economically achievable, permitting authorities should require, for each subsequent permit term, a reassessment based on new or improved techniques to eliminate or relocate, or on changed circumstances that influence economic achievability.

With regard to the first consideration, the Department does not authorize new CSO Points. Furthermore, consistent with the National CSO Control Policy, the Department through requirements contained in this General Permit, and other enforceable commitments, requires CSO permittees to minimize CSO discharges.

With regard to the last two considerations, the elimination or relocation of existing CSO discharges to sensitive areas is a two step process. One step is to determine the feasibility or economics of eliminating or relocating CSO Points that discharge to sensitive areas. The feasibility studies required by the General Permit will include the evaluation of the feasibility and cost associated with the treatment, reduction and elimination of all CSO discharges at all CSO Points. Therefore, the feasibility or economics of eliminating or relocating CSO Points that discharge to sensitive areas will be developed.

The development and implementation of CSO LTCPs requires coordination with many Federal and State regulatory programs and activities. As discussed in the Response to Comment No. 13, the Department has initiated a process that facilitates the coordination of the CSO LTCPs with the appropriate State and Federal regulatory programs and initiatives. Among the various influencing factors associated in developing a CSO

LTCP are the Total Maximum Daily Load (TMDL)/Waste Load Allocation (WLA) process and Use Attainability Analyses (UAA).

The other step is to make a decision, prioritization, or ultimate selection of a LTCP that determines how discharges to sensitive areas will be addressed. The decision on how to treat a discharge to a “sensitive area” will be addressed during the selection of a Long-term Control Plan after the studies required under this General Permit have been completed.

The remaining elements of the National CSO Control Policy are (2) operation plan revisions to include agreed-upon long-term CSO controls; (3) implementation schedule for CSO controls; and (4) post construction compliance monitoring program. The timeframe for implementation of the remaining elements of the CSO LTCP process will be addressed when they can be clearly defined.

32. COMMENT:

There are several endangered and threatened species under the jurisdiction of the National Marine Fisheries Service (NOAA Fisheries) that are known to be present in the waters of New Jersey. The Federally endangered shortnose sturgeon (*Acipenser brevirostrum*) is present in the Delaware and Hudson Rivers. Shortnose sturgeons are known to occur in the Delaware River from the lower bay upstream to at least Lambertville, New Jersey. Tagging studies by O’Herron et al. (1993) show that the most heavily used portion of the river appears to be between river mile (RM) 118 below Burlington Island and the Trenton Rapids at RM 137. Shortnose sturgeon overwinter in dense sedentary aggregations in the upper tidal reaches of the Delaware River between RM 118 and RM 131, with large concentrations around Newbold Island and Duke Island. However, sturgeon in the Delaware River do not appear to remain as stationary during overwintering periods as in other rivers. During the late summer months, shortnose sturgeon are more dispersed and are thought to be more widely distributed throughout the river and estuary than in the winter months.

The size of the adult shortnose sturgeon population in the Hudson River is estimated at 61,057. Shortnose sturgeons occur in the Hudson River from approximately New York City to the Troy Dam (RM 151). From late fall to early spring, adult shortnose sturgeon concentrate in a few overwintering areas. Spawning adults concentrate near Kingston (RM 87) while one group of non-spawning adults concentrates near Kingston and the other near Haverstraw Bay (RM 33-38). In mid-April, reproductively active adults begin their migration upstream to the spawning grounds that extend from below the Federal Dam at Troy to about Cocksackie (RM-149-118). Spawning occurs from late April through May, after which they disperse down river into their summer range. The broad summer range occupied by adult shortnose sturgeon extends from approximately RM 23 to RM 78. Similar to non-spawning adults, most juveniles occupy the broad region of Haverstraw Bay (RM 34-39) by late fall and early winter. Juveniles are distributed throughout the mid-river region during the summer (RM 23 to RM 78) and move back into the Haverstraw Bay region during the late fall. In addition to shortnose sturgeon, several listed species of sea turtles and whales under the jurisdiction of NOAA Fisheries may also be seasonally present in the coastal waters of New Jersey. Four species of Federally threatened or endangered sea turtles may be found seasonally in the Waters off New Jersey. These include the Federally threatened loggerhead (*Caretta caretta*) and the Federally endangered Kemp’s ridley (*Lepidochelys kempi*), green (*Chelonia mydas*) and leatherback (*Dermochelys coriacea*) sea turtles. Several species of whales may also be present in the waters off of New Jersey. These include the endangered North Atlantic Right (*Eubalaena glacialis*), Fin (*Balaenoptera physalus*) and Humpback (*Megaptera novaengliae*) whales.

The General Permit was last issued on February 28, 2000 and is due to expire on February 28, 2005. The General Permit controls the discharge of pollutants from CSS through CSO Points within the State of New Jersey. CSSs are primarily located along the tidal portions of the Delaware River and its tributaries in Camden County, along the tidal portion of the Raritan River, along the Passaic River, and throughout the New York-New Jersey Harbor Complex. There are approximately 280 CSO discharge points located throughout the State. These discharges are associated with the CSS of approximately thirty municipalities or other public entities that own and/or operate a portion of a CSS.

CSSs are wastewater collection systems designed to carry sanitary sewage, industrial and commercial wastewater, and stormwater runoff in a single system of pipes to a publicly owned treatment works (POTW). During dry weather, all flow is conveyed to the POTW. During periods of rainfall or snow melt, the total wastewater flows entering the collection system can exceed the capacity of the system or the treatment facility. Under such conditions, CSSs are designed to overflow at predetermined CSO Points and result in discharges of excess wastewater flows directly to surface water bodies.

The existing General Permit requires owners and/or operators of any portion of a CSS to develop and implement technology-based control measures including the Nine Minimum Control Measures identified in the National CSO Control Policy. The technology-based requirements include the prohibition of Dry Weather Overflows, prevention of surface water intrusion into the CSS, the control of Solids/Floatables, the development of proper operation and maintenance plans and manuals, and the institution of monitoring and reporting procedures. The permit also includes compliance schedules that will continue to remain in effect without any change. The new permit requirements incorporate certain additional provisions concerning the development of CSO Long-term Control Plans (LTCPs) as required by the National CSO Control Policy. LTCPs must ensure that both the technology-based and water quality-based requirements of the Clean Water Act (CWA) are met. The proposed revision will also require owners and/or operators of combined sewer systems to develop and evaluate alternative control measures for the control of pathogens and to formulate cost and performance relationships.

Because CSO discharges include raw sewage, they contain a combination of untreated human waste and pollutants discharged by commercial and industrial establishments. CSOs also have a significant stormwater component that may include pollutants from urban and rural runoff. Therefore, pathogens, solids and toxic pollutants may be discharged directly to the waters of the State during wet weather events. The Nine Minimum Control Measures and the LTCPs are designed to minimize the adverse affects of these potentially toxic discharges. Several of these discharge locations are in areas where listed species are known to be present and these discharges may have the potential to adversely affect these species. However, the revisions to the General Permit are being made in an attempt to minimize the effects of the discharges to the water quality of the receiving waters and eliminate discharges in ecologically sensitive areas.

Based on the available information, the revisions to the General Permit should minimize the effects of any CSO discharges to the water quality of the receiving water and improve water quality conditions in these waters. NOAA Fisheries does not have any information indicating that the issuance of the revised General Permit is likely to adversely affect listed species under the jurisdiction of NOAA Fisheries. NOAA Fisheries, U.S. Fish and Wildlife Service, and EPA are currently engaged in Section 7 consultations on EPA's water quality standards and aquatic life criteria. Those consultations may reveal effects of EPA's program that NOAA Fisheries did not consider in this evaluation or they may change national water quality criteria and standards in ways that affect the water quality program in New Jersey. Either outcome might require NOAA Fisheries to reconsider the conclusions reached in this letter. (21)

RESPONSE:

The Department appreciates the National Marine Fisheries Service (NOAA Fisheries) comment that identifies the endangered and threatened species under the jurisdiction of the National Marine Fisheries Service (NOAA Fisheries). By including the NOAA Fisheries comments into this response document, the Department hopes to share this information with all interested parties.

33. COMMENT:

HydroQual Inc.'s, prepared the document entitled "Use and Standards Attainment Project -Draft Technical Memorandum -Rainfall Design Conditions -prepared for the City of New York Department of Environmental Protection -Bureau of Environmental Engineering cited on page 10 of the Draft General Permit for CSS. HydroQual's comment is only to re-emphasize that the document is still, at this point, a "draft" document and is not ready for general distribution. (22)

RESPONSE:

The Department acknowledges the comment and requests that HydroQual Inc. keeps the Department informed of any changes to the content and status of the document.

34. COMMENT:

Separate ownership of the regulators, of the conveyance systems, of the treatment plants creates all kinds of problems because the burden of cost falls on different parties to different degrees and we're going to have a lot of problems on adjudicating which costs go to which party. From that point of view, more State participation is needed than has been indicated so far. The State will have to get into the issue of the rights of the upland owners that discharge infiltration and inflow to the treatment plant as opposed to the rights of the treatment plant or the obligations to the treatment plant to enlarge their facilities. (1)

RESPONSE:

The additional activities required by the General Permit are limited to the performance of site or facilities specific feasibility studies including the development of cost and performance relationships for a variety of alternatives. Since these activities do not involve the selection of a final plan or the decision of the preference of one control alternative over another, the need for the Department to intercede between parties seems unlikely. The owners and/or operators of portions of a shared combined sewer collection, conveyance and treatment system are encouraged to work together to achieve CSO abatement objectives in a cost-effective manner. For further discussion, please refer to the Response to Comment No. 12.

35. COMMENT:

Public Notice -Table 1 sets forth all Combined Sewer Overflows (“CSO”) in the State of New Jersey. The Table indicates that there are seven (7) CSOs located within the Borough of Edgewater. The Table is incorrect. The Edgewater Municipal Utilities Authority (the “Authority”) has recently completed a multi-million dollar sewer separation project reducing the number of CSOs within the Borough from seven (7) to one (1), Outfall #009 located at the north end of the Borough. Although the remaining CSO outfall is located at the north end of the Borough and the Borough does contribute flows to it during wet weather events, the actual Outfall itself is owned by the Borough of Fort Lee. The Authority and Fort Lee have jointly constructed and jointly operate a netting chamber that treats discharges prior to reaching Outfall #009. Therefore, the Table should be revised to correctly indicate that the Borough of Edgewater owns no CSOs. (18)

RESPONSE:

The Department acknowledges the information provided by the Authority and recognizes that there may be some inaccuracies in Table I as presented in the Public Notice. The Department has requested all CSO Permittees to submit revised Request For Authorizations (RFA) including the CSO Point name; the latitude and longitude of CSO Point (end of pipe), accurate to the nearest second; and the name of the receiving waterbody. Upon receipt of this information from all permittees, the Department will make appropriate revisions to its files.

36. COMMENT:

Since the public participation element of the permit requires the Permittee to include people outside its service area, a more regional approach led by the Department would be more effective and cost efficient. (16)

RESPONSE:

The National CSO Control Policy (the “Policy”) requires the Permittee to incorporate a public participation process in the development of the LTCP. The Policy states that US EPA expects each long-term CSO control plan to utilize appropriate information to address the minimum elements of a CSO LTCP. One of the defined elements is Public Participation. Under Part II.C.3 Public Participation, the Policy states that “In developing its long-term CSO control plan, the Permittee will employ a public participation process that actively involves the affected public in the decision-making to select the long-term CSO controls. The affected public includes rate payers, industrial users of the sewer system, persons who reside downstream from the CSOs, persons who use and enjoy these downstream waters, and any other interested persons.”

The intent of this effort is to ensure that the Permittee responsible for the development of the LTCP is aware and responsive to public attitude and interests.

The Department is the delegated NPDES authority that is responsible for implementing the requirements of the National CSO Control Policy in New Jersey. It is the Department’s responsibility to assure that CSO permittees develop long-term CSO control plans and that NPDES permits meet the requirements of the CWA. Further, the Department is responsible for coordinating the review of the long-term CSO control plan and the development of NJPDES permit provisions.

The Department has actively solicited public involvement in the development of this General Permit and encourages regional approaches where they are appropriate. The Department has conducted both regional and statewide public participation processes in the development and issuance of the General Permit. The Department conducted public participation sessions for the development of CSO LTCP permit strategy including a Statewide CSO LTCP Symposium in 1999, six workgroup meetings between October 2001 – April 2002, with representatives of the regulated community, and met with the Public Interest Groups in December 2002. The Department publicly noticed the issuance of the draft permit and the scheduling of a public hearing regarding the General Permit in the DEP Bulletin on August 27, 2003. The Public Notice for the issuance of the draft permit and the public hearing were published in The Record, The Star-Ledger, The Asbury Park Press, The Times, and the Courier-Post. The Public Notice, the draft permit and associated documents were

mailed directly to permittees currently authorized under the General Permit, consultants who work with the communities and other interested parties including municipal, State and Federal officials and have been available at the Division of Water Quality's website for permitting and technical information at <http://www.state.nj.us/dep/dwq/gps.htm>.

Having fulfilled its obligations, the Department now requires that permittees undertake the public participation activities specified in the General Permit to involve all interested parties including rate payers, industrial users of the sewer system, persons who reside downstream from the CSOs, persons who use and enjoy these downstream waters, and any other interested persons.

37. COMMENT:

Reference is made to Part 0, Section 3, Subpart a. This Section of the Draft Permit requires a Public Participation Plan, including disclosure and public involvement in the CSO review process. Currently, the Authority conducts monthly public meetings, which are properly noticed to the public. At each meeting the Authority allows for a period of time to receive comments from the public and to address public questions. In addition, the Authority's Board of Commissioners contains two (2) members of the governing council for the Borough. The Authority requests confirmation from the Department that these existing procedures utilized by the Authority to communicate with the public will be sufficient to satisfy the Public Participation Plan requirements of the Draft Permit. (18)

RESPONSE:

The information presented is insufficient for the Department to make a determination at this time. Appendix A outlines the contents of a Public Participation Work Plan and the performance expectations of the Public Participation Program. The Authority must demonstrate in the submission of its work plan that it will meet the expectations as defined in the General Permit and may incorporate the above noted public meetings in its overall Public Participation Program. The Department will review the work plan based on the provisions of the General Permit including Appendix A. Determinations of the acceptability of individual Public Participation Work Plan proposals will be made at that time. You may contact the Department for additional guidance in this matter.

38. COMMENT:

Specific mention should be made to include watermen (e.g., clambers), recreational fishermen and boaters as members of the affected public who should be actively involved in the decision-making process of developing, evaluating and selecting the long-term CSO controls. (15)

RESPONSE:

The Department agrees and believes that watermen (e.g., clambers), recreational fishermen and boaters are included in the universe of the "affected public," specifically as "persons who use and enjoy these downstream waters." Affected parties or interested persons are encouraged to contact the Combined Sewer System Owners and/or Operators, or permittees, directly and ask to be included in a list of interested parties, or affected public, in order to be notified of the opportunities to participate in the Permittees specific Public Participation Program.

39. COMMENT:

Please clarify the relationship and role of existing Watershed Management Area (WMA) groups or committees in the public participation program. It appears to make sense that, if organizational structures already exist as a platform to involve the public, additional committees might be unnecessary. (15)

RESPONSE:

As stated in the Response to Comment No. 36, each permittee is required to develop and submit a Public Participation Work Plan that defines how the Permittee will comply with the requirements of Paragraph O.3.a. The Work Plan shall, at a minimum, include all of the information and items identified in APPENDIX A, as appropriate. If the Permittee can meet the requirements of APPENDIX A using elements of the Watershed Management Area group or committee efforts, the Permittee must make this demonstration in the Public Participation Program Work Plan and submit the work plan to the Department for review in accordance with the terms of the General Permit.

40. COMMENT:

The Department should require that the key information it has identified as information that *can* be presented to the public, in fact, *must* be presented to the public. This includes:

- Water quality goals for each receiving water segment;

- CSO control goals for each receiving water segment as developed under the presumption and/or demonstration approach options;
- Types of control alternatives available to meet CSO control goals;
- CSO control alternatives identified to meet the control goals; and
- The process of evaluating and comparing various alternatives for CSO control. (15)

RESPONSE:

The Department agrees and has modified the language contained in **APPENDIX A, CONTENT OF A PUBLIC PARTICIPATION WORK PLAN**, which lists the key information that shall be presented to the public accordingly. Under the section entitled: **Public Participation during the Development and Evaluation of Alternatives**, in the first two sentences the phrases “should be to involve” and “can be presented” were replaced with the phrases “shall be to involve” and “shall be presented” to emphasize the Department’s intent that these activities must be performed.

41. **COMMENT:**

The Department requires that a permittee summarize how it complied with the provisions of the General Permit if only one public meeting is held (the draft Appendix A contains a list of seven items that must be addressed). Separately, the Department requires that all permittees submit a Public Participation Report. Please clarify the difference between these two reports. Baykeeper recommends that the two submissions be combined and that all permittees should be required to submit information on all the listed matters (both in the bulleted list and in the narrative paragraph), regardless of how many public meetings have been held. (15)

RESPONSE:

The Department’s intent, consistent with the National CSO Control Policy, has always been to ensure the process actively involves the affected public in the decision-making of CSO LTCP development, by ensuring the public is adequately informed. However, the language contained in APPENDIX A was imprecise. Regardless of the number of meetings that a permittee holds, the Permittee must summarize in the Public Participation Report how the Permittee complied with the Public Participation Program requirements of the General Permit.

Permittees must make, at least, three (3) submissions to the Department concerning the Public Participation Program requirements. First, on or before the 120-days after the Effective Date of Permit, the Permittee shall develop and submit to the Department’s Municipal Financing & Construction Element (MF&CE), a Public Participation Work Plan that defines how the Permittee will comply with the requirements of O.3.a. Secondly, Paragraph O, 4, d, requires that, on or before 12 months after the Effective Date of the Permit, all permittees shall submit an Interim Status Report that briefly summarizes how the Permittee has complied with the requirements of Subpart O.3.a, b, c, & d. This would include a status of compliance with the development and implementation of the Public Participation Program at that time. Thirdly, on or before thirty-months after the Effective Date of Permit, the Permittee is required to submit the Public Participation Report that:

- Summarizes the public participation activities conducted;
- Describes the matters on which the public was consulted;
- Summarizes the public views, significant comments, concerns and suggestions; and
- Summarizes the Permittee’s specific responses in terms of the proposed action or an explanation for rejection of proposals made by the public.

The Department has revised **APPENDIX A CONTENTS OF A PUBLIC PARTICIPATION WORK PLAN**. Under the section entitled, **REQUIREMENTS**, the phrase in the second sentence of the second paragraph, “If only one public meeting is held,....” Has been deleted to clarify that permittees are obligated to the same Public Participation Program requirements regardless of the number of public meetings that are held. Secondly, the phrase “in the Public Participation Report” was added to that sentence to reaffirm that the demonstration of compliance with the permit provisions shall be included in the submission of the Public Participation Report. The revised sentence now reads “The permittee must summarize in the Public Participation Report how the Permittee complied with provisions of the permit, including: . . .”

42. **COMMENT:**

There is no problem with preparing a public participation program, but it is objectionable to have an implementation of that program by one hundred eighty days after the initial date. That is too soon. We won’t have any results; we won’t have any material ready yet to disclose to the public. All we have is the new permit requirement. The time periods should be reviewed, particularly the hundred and eighty days. (1)

One authority observed that it appears that the public participation and cost analysis efforts are to be done concurrently. “Since cost information would be needed to conduct a fully informative public participation process, shouldn’t the public participation process follow the cost analysis process?” This concern was repeated by another commenter (1, 11)

Another authority objected to the structure of the public participation program in that it requires the Authority to develop the public participation program prior to beginning its engineering studies. The authority asserted that this is problematic, as the engineering studies will provide the information necessary to have a beneficial public information. The authority suggested that the single driving factor in these analysis’ are cost vs. benefit, until such time as the costs and the benefits can be determined no meaningful public participation will be obtained. (16)

RESPONSE:

The General Permit requires the development and implementation of the Public Participation Program concurrently with the performance of the feasibility studies. The Permittee is required to develop and submit a Work Plan for the Public Participation Program to the Department for review on or before 120-days after the Effective Date of the Permit. The permittees are to implement a Public Participation Program within 180-days of the Effective Date of the Permit, unless otherwise directed by the Department.

The inclusion of the requirement for permittees to submit a Public Participation Work Plan for review and approval by the Department prior to the initiation of the Public Participation Program was in direct response to the request from the regulated community. This request was made during the numerous workgroup meetings held in the development of this phase of the CSO Control Strategy. The purpose of including the 60-day review period is to ensure that there was a mutual agreement between the Permittee and the Department regarding the activities and level of effort committed to those activities in the proposed public participation program prior to their initiation. If the Permittee submitted the work plan in accordance with the General Permit’s compliance schedule and did not receive written comments from the Department within 180-days of the Effective Date of the General Permit, the Permittee may presume to have Department’s acceptance of the work plan and is required to begin implementing the Work Plan.

The purpose of the work plan is to allow the Permittee to demonstrate to the Department how the Permittee will employ a public participation process that actively involves the affected public in the decision-making process of developing and evaluating the Long-term CSO Controls. The objective of the Public Participation Program should not be to merely inform the affected public of the results of the feasibility studies. As explained in Appendix A, of the General Permit, public agencies should encourage full presentation of issues at an early stage so that they can be resolved and timely decisions can be made.

Public participation programs provide an opportunity for responsible officials to become aware of public attitudes by providing ample opportunity for interested and affected parties to communicate their views. Public participation includes providing access to the decision-making process, seeking input from and conducting dialogue with the public, assimilating public viewpoints and preferences, and demonstrating that those viewpoints and preferences have been considered by the decision-making official. Public agencies are encouraged to offer a full presentation of issues in the early stages of the feasibility studies so that any concerns, preferences and/or recommendations may be considered and/or resolved and that timely decisions can be made.

During the development and evaluation of alternatives, the goal of the Public Participation Program should be to involve citizens in the process of the development of alternative solutions that protect the waters of the State and consider the financial impacts to the community as a whole. During the development and evaluation of CSO control alternatives, the following key information can be presented to the public as it is developed:

- A description of the Permittee’s combined sewer system;
- A description of the work required by the permit and the reason for its proposal;
- A list of issues on which public comment/opinion by the public is specifically solicited;
- Description of the water quality goals for each receiving water segment;
- An explanation of CSO Control Performance Objectives contained in the permit and applicable to the types of facilities owned and/or operated by the Permittee; and
- An explanation of the methodology to be used in developing and evaluating CSO Control Alternatives.

43. **COMMENT:**

Given the limited availability of land in the urban communities, the use of storage and other technologies is not feasible (16).

RESPONSE:

The permit requires site-specific feasibility studies. The purpose of the studies is to determine site-specific feasibility and economics of the implementation of certain control strategies. Site-specific constraints such as the availability of open space and/or the cost for land acquisition must be considered, documented and appropriately addressed in the cost and performance analyses for each facility. The permittee(s) cannot summarily dismiss the feasibility of available control strategies without appropriate level of effort to address limited availability of vacant land or opens space. Permittees must consider the realignment of the sewerage infrastructure, as well as, the possible need to conduct condemnation proceedings, or the need to take private property for public use by the power of eminent domain, if vacant land or opens space is not available at or reasonably near the desired alignment of the proposed control measures. Condemnation costs associated with acquisition of land necessary for the implementation of a control strategy should be incorporated into the cost and performance analyses. Please refer to APPENDIX E, COST AND PERFORMANCE ANALYSIS, for guidance on developing the cost performance analyses.

The process of developing and evaluating alternatives shall include the identification of any and all available open space and/or vacant property, and if necessary currently occupied land within a reasonable proximity of the desired location of proposed control facilities or the combined sewer system alignment. This analysis should be documented in the Cost and Performance Analysis Report and/or supporting documentation as explained in the Fact Sheet in the discussion regarding developing the Cost and Performance Analyses.

44. COMMENT:

The Edgewater Municipal Utility Authority (Authority) made reference to Part 0, Section 3, Subpart c.ii. This Section of the Draft Permit requires the Authority to evaluate the frequency of CSO events. A mechanical event recorder would be required downstream of the regulator in order to establish the frequency of CSO events, and any reduction possible with improvements. However, the Authority knows from prior evaluations that the overflow weir of the regulator is set at a maximum height already. To further raise the weir would increase peak flows to the treatment facility and significantly increase the possibility of exceeding the treatment facility's capacity. Therefore, conducting a study to determine how to further maximize flows to the treatment facility would be fruitless and would result in the unnecessary expenditure of public funds. (18)

RESPONSE:

Part 0, Section 3, Subpart c.ii. requires permittees, that own or operate Combined Sewer Collection and Conveyance Systems upstream of the CSO Control Facility to develop alternatives that achieve each of the specified targeted frequencies of discharge events per year without increasing the peak volumetric flow rate of sewage conveyed to the DTW for treatment. The permit requires the performance of feasibility or preliminary engineering or planning studies and not the actual modification of the existing facilities. The objective is to evaluate the feasibility of reducing the amount of sewage to be collected and conveyed to the downstream control facility by reducing the contribution of wet weather flows or direct inflow. The commenter is directed to review **Appendix C. MINIMUM CONTROL MEASURES FOR COMBINED SEWER COLLECTION AND CONVEYANCE SYSTEMS.**

The National CSO Control Policy encourages municipalities to consider the use of Publicly Owned Treatment Works (POTW) capacity for CSO control as part of the LTCP. The requirements of this General Permit to evaluate the feasibility and cost of conveying additional sewage flows to the POTW for treatment are intended to assist in determining the feasibility and cost related to evaluating the use of POTW capacity for CSO control as part of the LTCP. Therefore, permittees must perform the analyses as required by this General Permit and submit the documentation to the Department for review.

45. COMMENT:

Under Section O.3.d, the permit requires the development and evaluation of alternatives to increase the conveyance of stormwater flows to the DTW without any consideration as to whether the DTW has capacity to treat the additional flow. The BCUA has entered into an ACO with NJDEP to develop and implement a program that encourages member municipalities with separate and combined sewer systems to reduce infiltration/inflow from their systems to eliminate sanitary sewer overflows (SSOs) and the extraneous flows impact upon the DTW. Under the modified General Permit for CSS, however, we will need to evaluate the potential for increasing wet weather flows from combined sewer areas without any consideration as to the

impact to the existing SSOs and the DTW. It appears that the modified General Permit creates a paradox with our existing program and potential conflict with the ACO. (13)

RESPONSE:

The National CSO Control Policy encourages municipalities to consider the use of POTW capacity for CSO control as part of the LTCP. The General Permit only requires the performance of feasibility or planning/preliminary engineering studies and not the actual implementation of any selected plan. Some of these studies may be beneficial to the Authority in fulfilling its obligations under the current ACO. Regardless, the provisions of this General Permit do not waive or supplant the BCUA's obligations to comply with other NJPDES permit requirements or other enforceable commitments including the referenced ACO and its amendments. In the event there is a conflict between the ACO/JCO and the new permit it is the BCUA's obligation to raise this concern with the Department and request clarification and/or modification of the specific requirement. Please refer to the Response to Comment No. 19 for additional discussion this concern.

46. COMMENT:

Reference is made to Appendix D: Minimum Control Measures for Combined Sewer Collection and Conveyance Systems and Combined Sewer Overflow Control Facilities. The expansion of DTW secondary and primary capacity is not addressed in this draft permit. NJDEP regulations (N.J.A.C. 7:14A-13.3) require that all flows entering the DTW (in this case, PVSC) undergo secondary treatment before being discharged into surface waters. The typical DTW can perform secondary treatment on flows up to twice the peak dry weather flow. PVSC receives flows from both CSS areas and separately sewer areas, and this draft General Permit requests the Permittee to investigate increasing conveyance of wastewater from CSS areas to the DTW by increments of 2, 4, 6, and 8 times the average dry weather peak flows (Section O.3.d.iii. of draft General Permit). There are a number of issues with this element of the General Permit.

1. What level of treatment (primary or secondary) would the increased wastewater flows from CSS areas receive? If treatment below secondary is permitted, what regulations govern that discharge?
2. May the Permittee mix flows from CSS and separate-sewer areas in the same interceptor sewer, and in doing so give portion of the flow over the capacity of secondary treatment only primary treatment, and the other portion secondary treatment before discharge into the receiving water body? If yes, what regulations and/or permits would apply to treatment of these increased mixed flows receiving only primary treatment?
3. If the Permittee is not allowed to mix flows from CSS and separate-sewer areas, is the Permittee to investigate means of conveying flows exclusively from CSS areas in a new separate interceptor sewer to a treatment facility? What regulations would cover the conveyance and treatment of flows from CSS areas?

(8)

RESPONSE:

The PVSC has identified several important issues that need to be addressed in evaluating the cost and feasibility of receiving and treating additional sewage flows at the DTW. The requirements of this General Permit are applicable only to operation of Combined Sewer Systems, Combined Sewer Overflow Points, Combined Sewer Overflow Control Facilities, Combined Sewer Collection and Conveyance Systems and associated appurtenances authorized under the General Permit and are not applicable to the operation of DTWs or wastewater treatment facilities. In future administrative actions, the Department will propose to modify or revoke and reissue other Individual NJPDES permits applicable to the operation of DTWs that receive and treat sewage from combined sewer systems by adding requirements that compliment those contained in this General Permit. In these future actions, the Department will propose that owners and/or operators of wastewater treatment facilities that receive and treat sewage generated in combined sewer systems with combined sewer overflow points to evaluate the feasibility and cost of treating additional sewage flows.

The Division of Water Quality welcomes the opportunity to meet and discuss these issues and encourages the PVSC or any other interested party to contact Stanley V. Cach Jr., Assistant Director, Municipal Financing and Construction Element to coordinate these discussions.

47. COMMENT:

The Edgewater Municipal Utility Authority remains concerned about the fate of the Borough of Cliffside Park's regulator No. 12. The Authority strongly believes that the closure of this regulator will result in significant additional flows reaching the Authority's treatment facility. It is expected, and has been explained to the Department and Cliffside Park on numerous occasions, that these additional flows will result in severe damage to the Authority's treatment and collection systems as well as an uncontrolled by-pass of the

Authority's treatment facility. The Authority implores the Department to strongly consider implementing stringent controls over Cliffside Park's regulator No. 12 and its associated CSO Outfall. Failure to properly manage the disposition of both the regulator and the outfall will result in significant irreparable harm to the Authority and its facilities. (18)

RESPONSE:

According to the information contained in the Department's files to date, Cliffside Park Borough's Discharge Point No. 012 is not a Combined Sewer Overflow Point and is not authorized under the General Permit for Combined Sewer Systems or other NJPDES permit. The General Permit and its provisions are not applicable to this discharge point. Issues related to Discharge Point No. 012 need to be resolved outside of the scope of this permit action.

48. COMMENT:

The timeframe provided to develop and submit a Public Participation Work Plan is insufficient. Time must be provided to develop an RFP, solicit proposals, review and evaluate said proposals, prepare resolutions for award, develop and execute a service contract, and develop the plan for submission. We would request that a minimum of 240 days be provided for this task. It should also be noted that the schedule contained in the draft appears to have not addressed review time by the Department. 120 days is proposed to develop the plan and submit it to the Department, 60 days given to make any revisions for a total of 180 days from EDP. This leaves no time for departmental review. We would ask that this milestone be revised so as to commence after the 60-day revision period. (9)

RESPONSE:

The Department believes that 120-days is an adequate time allowance for the development and submission of the Public Participation Work Plan. The Effective Date of the Permit is 30-days after the Date of Permit Issuance. Therefore, the General Permit requires permittees to develop and submit the Public Participation Program Work Plans within 150-days of the Issuance Date of the Permit.

The General Permit provides a 60-day period for the Department to review and/or approve the submitted Public Participation Program Work Plans or provide written comments. The permit requires the Permittee to develop and submit a Public Participation Work Plan within 120-days of the Effective date of the Permit. If, after submission of the Public Participation Work Plan and within 180-days of the Effective Date of the Permit, the Permittee does not receive written comments from the Department on the Permittee's Public Participation Work Plan, the Permittee is required to proceed with the implementation of the proposed Public Participation Plan. Therefore, the schedule provides a 60-day period for the Department to review and accept or provide written comments on submitted Public Participation Work Plans.

The General Permit requires the Permittee to implement a Public Participation Program Work Plan within 180-days of the Effective Date of the Permit, **unless otherwise directed by the Department**. The purpose of including the qualification clause, "unless otherwise directed by the Department," is to provide the Department with a mechanism to permit adjustment of compliance schedules when it is appropriate. If within the 60-day review period, the Permittee receives written comments from the Department, the letter conveying these written comments may include an alternative extended compliance schedule for implementation of the Public Participation Plan depending on the size and scope of the revisions required by the Department.

49. COMMENT:

The NY/NJ Baykeeper (the "Baykeeper") requests that the elements of the "Long Term Control Plan" proposed in this General Permit is implemented with the greatest speed, and quickly followed with a proposal for the implementation of the remaining elements. In 1994, well aware of the significant environmental and public health threats caused by CSOs, the US Environmental Protection Agency issued its "Combined Sewer Overflow (CSO) Control Policy." In 2000, Congress amended the Clean Water Act, making compliance with that policy a statutory mandate. The key features of this control strategy are technology and operational measures known as the "Nine Minimum Controls" and a "Long Term Control Plan" (LTCP) meant to achieve water quality control standards. It is the New Jersey Department of Environmental Protection's (the "Department") responsibility, as the delegated authority to implement the Clean Water Act, in order to ensure compliance with these requirements.

The 1994 National CSO Control Policy required that the Permittees "should develop and submit this long-term CSO control plan as soon as practicable, but generally within two years after the date of the NPDES permit provision, Section 308 information request, or enforcement action requiring the Permittee to develop the plan."

(See 59 FR 18688, April 19, 1994). Understanding that the National CSO Control Policy allows for consideration of a Permittee's financial capability in connection with implementing a LTCP, the Baykeeper feels that the current timeline for the development of LTCPs is unacceptable.

The Department needs to consider the Memorandum of Agreement between the USEPA, Region 2 and the Department, as amended, which required the Department to submit established TMDLs for approval to EPA Region 2 by July 31, 2003. These TMDLs included 170 fecal coliform impaired waters for which 120 TMDLs were to be established. As the Department's Fact Sheet states, "each of the CSO impacted waterbodies has been scheduled for a TMDL development for fecal coliform.

Since the Cost and Performance Analysis Report requires the Permittees to demonstrate the relationships among a set of CSO control alternatives, including alternatives designed to reduce loadings in terms of fecal coliform and Enterococci, and the projected construction/implementation costs, it should be a priority to complete this Report as quickly as possible, in light of the strict requirements of the Memorandum of Agreement. (15)

The Department is requiring that the Permittee submit a Cost and Performance Analysis Report on or before the Effective Date of Permit + 30 Months. The Baykeeper believes that, at the very, maximum, the Permittee should be required to submit a Cost and Performance Analysis Report on or before the Effective Date of Permit + 24 Months. The CSO Control Policy provides for a measure of flexibility when dealing "with site-specific factors that may influence the complexity of the planning process" and allows for the Department to "establish a longer timetable for completion of the long-term CSO control plan on a *case by-case- basis*" (emphasis added). The Department should not extend the timetable on such a blanket basis, but rather deal with individual facilities as the need arises. Two years is long enough for a facility to complete the cost/performance considerations element of the LTCP, especially when it has essentially been on notice of this requirement since 1994. (15)

The North Bergen Municipal Utilities Authority (the "Authority") commented that it objected to the time frames insofar as they do not provide adequate time to address the needs of the individual communities. The permit treats communities with one CSO the same as communities with multiple CSO Points, which require substantially more work, effort and time to complete. Therefore the time frame should be extended to provide adequate time for the larger CSO communities. The Authority requests the time frames be increased by a factor of two or to 60-months to accommodate the communities with multiple CSO Points. (16)

The City of Paterson's engineer also requested additional time to complete the requirements of the General Permit. The size and complexity of the combined sewer system for the City, combined with the City's interdependence with PVSC and the other combined sewer communities makes the type of evaluation required (the Cost and Performance Analysis for CSO Points Operation and the Cost and Performance Analysis for Combined Sewer Collection and Conveyance Systems) a huge undertaking. As with the Public Participation Plan, time is required for development of a complex technical RFP, soliciting proposals, reviewing and evaluating proposals, preparing resolutions for award, developing and executing the required professional services contracts and performing the work itself. The City believes that the time has been significantly underestimated; and if all of the technical requirements presented in the draft and permit remain unchanged, the City requests that at least 48 months be provided for these tasks. (9)

The NY/NJ Baykeeper, through the Open Public Records Act reviewed several of the letters submitted to the Department offering comments on the General Permit. The Baykeeper observed that several complaints on the schedule for implementation were submitted. "The Department has been holding interest group meetings on this proposal for over a year now. Additionally, the actual language of the proposed General Permit conditions was noticed in August 2003, over four months ago. The affected facilities have known about these Federally mandated conditions for some time and to now plead that they need more time is disingenuous at best. A line must be drawn and facilities must come into compliance as quickly as possible. (15)

RESPONSE:

As evidenced by the above referenced comments, there is a wide range of opinions on the appropriate amount of time that should be provided to comply with the General Permit requirements. The Department shares the interest of the Baykeeper and other public interest groups in the need to diligently pursue water quality improvement. At the same time, the Department must be reasonable in establishing responsible and achievable compliance schedules. As previously discussed, the compliance schedule contained in this permit is structured to coordinate the feasibility studies or planning/preliminary engineering studies developed under the

permit with the TMDL/WLA Process (See the Response to Comment No. 13.). It is important that the studies required in the General Permit be completed as soon as possible to ensure coordination with the TMDL Process and/or Use Attainability Analysis, as needed.

The Department believes that the provision of 30-months for the completion of the proposed studies is a practicable time allowance for development of Requests for Proposals (RFPs), soliciting, reviewing and evaluating proposals, preparing resolutions for award, developing and executing the required professional services contracts, conducting a public participation program, performing the feasibility studies and developing and submitting the necessary reports.

50. COMMENT:

The NY/NJ Baykeeper stated that the affects of Combined Sewer Systems (CSS) on our environment are widely known elevated pathogens resulting in beach closures, contamination of shellfish beds, and increased spread of waterborne diseases. In fact, public health studies have documented that more than half of the waterborne disease outbreaks in the United States in the past fifty years were preceded by heavy rainfall. Public health experts estimate that there are 7.1 million cases of mild to moderate and 560,000 cases of moderate to severe infectious waterborne disease in the United States each year. It should be a priority for the State to eliminate all Combined Sewer Outfalls. (15)

RESPONSE:

The Department shares the NY/NJ Baykeeper's recognition of the influence of CSOs to the contamination of the waters of the State with pathogens and related human health concerns. The Fact Sheet clearly expressed this recognition and how it served as the basis for Department's prioritization of the activities contained in the General Permit.
